STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Denis Mosby,
Petitioner,

vs.

NO: 12WC 38972

Massman Traylor Alberici aka MTA,
Respondent,

14IWCC0001

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of jurisdiction and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 15, 2013, is hereby affirmed and adopted.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 0 2 2014
0121813
CJD/jrc
049

Charles J. DeVriendt

Michael J. Brennan

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

MOSBY, DENIS
Employee/Petitioner

Case# **12WC038972**

MASSMAN TRAYLOR ALBERICI AKA MTA
Employer/Respondent

14IWCC0001

On 4/15/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

4463 GALANTI LAW OFFICES
DAVID GALANTI
PO BOX 99
EAST ALTON, IL 62024

1433 McANANY VANCLEVE & PHILLIPS
LISA HENDERSON
515 OLIVE ST SUITE 1501
ST LOUIS, MO 63101

14IWCC0001

STATE OF ILLINOIS)
)SS.
COUNTY OF Madison)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

DENIS MOSBY
Employee/Petitioner

v.

MASSMAN TRAYLOR ALBERICI aka MTA
Employer/Respondent

Case # **12** WC **38972**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Collinsville**, on **2/26/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Jurisdiction**

FINDINGS

On the date of accident, **10/20/12**, Respondent ***was*** operating under and subject to the provisions of the Act. However, jurisdiction under the Illinois Workers Compensation Act is not found, for reasons set forth herein.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$58,465.68**; the average weekly wage was **$1124.34**.

On the date of accident, Petitioner was **50** years of age, ***single*** with **1** dependent children.

Respondent ***has*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

For reasons set forth in the attached decision, jurisdiction under the Illinois Workers Compensation act is not applicable.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

April 11, 2013
Date

ICArbDec19(b)

APR 15 2013

14IWCC0001

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DENIS MOSBY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**No. 12 WC 38972**
	)	
MASSMAN TRAYLOR ALBERICI, a/k/a MTA,	)	
	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

This matter was heard pursuant to Section 19(b) of the Act. Prior to hearing, the parties acknowledged that the sole issue in dispute at this time is whether Illinois has jurisdiction over the case, and the parties agreed to reserve the issue of medical costs incurred to this point to a future hearing date if Illinois jurisdiction is established, or address them in Missouri if Illinois jurisdiction is not proper.

STATEMENT OF FACTS

The facts of the case were essentially undisputed. Live testimony was not presented. The petitioner was injured on October 20, 2012 in a construction accident while assembling the I-70 bridge over the Mississippi River. When complete the bridge will link Missouri and Illinois. At the time of the accident, the bridge was not complete; each end of the bridge was connected to its respective river bed, but not to each other. Regarding the facts surrounding the accident and jurisdictional basis, the parties tendered stipulations of fact as follows (see PX2):

1. Petitioner was involved in an accident which occurred on October 20, 2012 while working for the employer.
2. Petitioner's accident occurred on the Missouri side of the Mississippi River.
3. Petitioner's contract for hire was executed in the State of Missouri.
4. Petitioner's paychecks were issued from the employer's Missouri office.
5. Petitioner parked his car on the Illinois river bank every morning before reporting to the job site he was assigned to work on.
6. Petitioner worked fifty-percent of his hours in Missouri and the other fifty-percent in Illinois.
7. Petitioner's accident occurred when he fell from Pier 11, which is attached to the Missouri river bed. He then swung over the Mississippi River but did not fall into the river.
8. Pier 11 and Pier 12 are being utilized to construct the I-70 bridge, which when complete, will connect Missouri and Illinois.
9. Pier 12 is located on the Illinois side of the Mississippi River and attached to its river bed.

10. At the time of the accident, Petitioner was wearing a harness secured to Pier 11, and had he not been wearing his harness, he would have fallen into the Mississippi River.
11. At the time of the accident, Pier 11 was not connected to Pier 12 and the I-70 bridge was not complete.
12. At the time of the accident, no one could travel from Illinois to Missouri using the I-70 bridge.
13. This is a non-disputed accident. Respondent agrees to authorize surgery as per Dr. Paletta's recommendation.

The medical treatment to date notes that the petitioner has continued to work for the respondent in a generally supervisory position and disability is not presently at issue. While the claimant's left shoulder injury has resolved with conservative care, Dr. Paletta has recommended surgical exploration and repair for the claimant's right shoulder rotator cuff tear. See generally PX1.

LEGAL ANALYSIS

As stipulated by the parties, the sole issue in dispute at this time is jurisdiction. The petitioner argues that Illinois and Missouri jurisdiction would concurrently apply, and the respondent argues that only Missouri would have proper jurisdiction regarding this claim. Notably, if Illinois jurisdiction is available, the injured employee may elect to receive benefits under the Illinois Workers Compensation Act even if jurisdiction could also be properly established in Missouri.

Jurisdiction under the Illinois Workers' Compensation Act is determined pursuant to Section 1(b)2 of the Workers' Compensation Act, 820 ILCS 305/1(b)2, which allows for jurisdiction to be proper for any one of three circumstances:

1. Where the contract of hire is made within the State of Illinois; or
2. Where the injury is incurred within the State of Illinois; or
3. Where the injured person's employment is principally localized within Illinois.

The parties stipulated that the contract for hire was not made within the state of Illinois, and therefore the first avenue is foreclosed to the claimant. Attention then turns to the other two potential routes.

SITUS OF THE INJURY?

Neither party identifies a prior Workers' Compensation case directly on point. The claimant argues that the civil case of *Schueren v. Querner Truck Lines, Inc.*, 22 Ill.App.2d 183 (4th Dist. 1959), would be instructive. There, the Appellate Court found that concurrent jurisdiction had been established in Missouri and Illinois relative to a personal injury claim which had occurred when a man exiting a vehicle on the bridge was struck by a passing motorist driving over the bridge. The defendant in that matter had petitioned the claim for removal to Federal Court, and that the Federal Court refused jurisdiction. The defendant then raised a jurisdictional defense, arguing that the accident

occurred on the Missouri side of the bridge and not on an Illinois highway. The Appellate Court found that "though the state boundaries go to the middle of the river, it is established law that Missouri and Illinois have concurrent jurisdiction over the entire river and its traffic," citing Chapter 22, 3 U.S. Statutes 545. Id at 190-191.

The claimant further points to a criminal case, *People of the State of Illinois vs. Norman Pierre Pitt*, 106 Ill.App.3d 117 (5th Dist. 1982), where a defendant who had murdered someone while on a bridge spanning the Mississippi attempted to defeat an Illinois prosecution based on a jurisdictional argument. The appellate court relied on the Statehood Admission Act and found that the prosecution could establish jurisdiction by proof that the crime occurred on the bridge, rather than some particular portion of the bridge, and that the waterway would be subject to concurrent jurisdiction. Id. at 118-120.

The problem with the reasoning advanced by the claimant is that the courts that granted concurrent jurisdiction did so because "a traveler on a bridge is usually not likely to know whether he is over an island or over the water, or on one side of the main channel or the other." *Pitt* at 120, citing to *State v. George* (1895), 60 Minn. 503, 505-06, 63 N.W. 100, 100-01. The cases granting concurrent jurisdiction on the bridge have done so precisely because it would be logistically nightmarish to determine exactly at what particular foot the jurisdiction transferred from one State to the other, especially if someone fell from the bridge into the water, or if (in a murder case) evidence or a body was thrown from a bridge. That is exactly opposite of the case here. There is no uncertainty or question about where the claimant was when the accident occurred.

Moreover, the cases cited all involve a bridge between two states, connecting solid ground. The legal reasoning throughout these cases has been that the State keeps its jurisdiction and control over that which is attached to it. If a bridge is attached to the State, the State may exercise legal authority on the bridge. If a river touches the State, the State keeps control over that aspect of the water attached to the State.

But in this case, there was no bridge. The claimant was injured on what is effectively a pier or a dock, extending from Missouri over water, and not touching Illinois or any structure linked to Illinois. He did not fall into the river, but remained attached to the pier thanks to the safety harness. There is no confusion or difficulty in determination of borders here, and accordingly, no basis for concurrent jurisdiction. He was injured on a solid structure which was part of Missouri, and that is where the Arbitrator finds the situs of the accident to be appropriately assigned.

PRINCIPALLY LOCALIZED?

The question of principal localization of employment was addressed in *Cowger v. Industrial Commission*, 313 Ill.App.3d 364 (5th Dist. 2000). There, a nationwide truck driver who lived in Illinois wished to exercise Illinois jurisdiction regarding a vehicular accident in Texas. The Commission denied jurisdiction, and the Appellate Court affirmed that finding. The Court stated, "'...employment is principally localized in this or another State when (1) his employer has a place of business in this or such other State

and he regularly works at or from such place of business, or (2) if clause (1) foregoing is not applicable, he is domiciled and spends a substantial part of his working time in the service of his employer in this or such other State.'" *Id.* at 372, internally citing *Montgomery Tank Lines v. Industrial Commission*, 263 Ill.App.3d 218, 222 (1994, and 4 A. Larson, Workmen's Compensation Law app. H, 629, 649-50 (Model Act) (1986).

The *Cowger* Court noted further that this "'focuses first, and foremost, upon the situs where the employment relationship is centered,' and the alternative test involving domicile and working time is not be considered unless the situs of the relationship cannot be determined." *Id.* The *Cowger* Court then enumerated five factors to be considered in determining the situs of the employment relationship, to wit:

(1) where the employment relationship is centered, i.e., the center from which the employee works;

(2) the source of remuneration to the employee;

(3) where the employment contract was formed;

(4) the existence of a facility from which the employee received his assignments and is otherwise controlled; and

(5) the understanding that the employee will return to that facility after the out-of-State assignment is complete.

Cowger at 373, itself citing *Montgomery Tank Lines*, supra.

The Court then detailed the application of each factor to the claimant's employment, ultimately concluding that the claimant's employment was not principally localized in Illinois.

Applying those factors to this case, the parties stipulated that the petitioner worked 50% of his hours in Illinois and the other 50% of his hours in Missouri. He was paid from the employer's Missouri office. The employment contract was formed in Missouri. The fourth and fifth factors (surrounding the existence of a control facility) are unclear. While the parties stipulated the claimant would park in Illinois before reporting to work, there is no specific demonstration of where the petitioner would receive his daily assignment, though the employer's office is in Missouri (noting the hiring location, pay department, and the notice on the Application for Adjustment of Claim).

The *Cowger* Court faced a similar situation in its review, noting that the claimant had no fixed center of work, and while he would call the Indiana facility for assignment and have the truck serviced there, was not required to check in. Factors two and three (remuneration site and employment contract site) were clearly sited in Indiana. The Court found that the job was principally sited in Indiana. *Cowger* at 373. The analogy to this case is strong enough that the Arbitrator is convinced that the claimant's employment is principally sited in Missouri within the *Cowger* analysis.

CONCLUSION AND ORDER

For the forgoing reasons, this claim is denied due to a lack of jurisdiction.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Amanda Jordan,

Petitioner,

vs.

NO: 05 WC 54728
06WC 18691

City of Chicago,

14IWCC0002

Respondent,

DECISION AND OPINION ON REVIEW

A Petition for Attorney's Fees having been filed by Joseph Spingola and due notice having been given; this cause came on for hearing before Commissioner Charles J. DeVriendt on November 14, 2012, in Chicago, Illinois. The Commission having jurisdiction over the persons and subject matter and being advised in the premises finds:

The Petitioner hired the law firm of Larry Coven to represent her in a Workmen's Compensation case against the City of Chicago. This was for an accident she sustained on December 9, 2005. This claim received a 05 WC54728 case number at the Commission.

Petitioner allegedly had some difficulty finding Mr. Coven after she signed up her case and sought representation with Joseph Spingola. (Transcript of Arbitration Hearing Pgs. 32-33) Mr. Spingola filed case number 06 WC18691 for the same accident date.

Apparently, Petitioner went back to Mr. Coven, and he settled the case with the City of Chicago and had a settlement hearing with Arbitrator Cronin on November 14, 2007. Mr. Spingola was present at that hearing. Based on a preliminary conference held by the two attorneys and the Arbitrator, it was decided by all parties involved that Mr. Spingola should be

entitled to 5% of the 20% attorney's fees. This was only if Petitioner decided to accept the settlement that was to be presented. (Transcript of Settlement Contract Hearing Pg. 9)

After undergoing direct examination from Mr. Coven the Petitioner indicated that, she wanted to settle the claim. (Transcript of Settlement Contract Hearing Pgs. 6-10) However, Mr. Spingola under additional questioning was able to get the Petitioner to admit that she sent him a copy of her credit report and discussed with him the unpaid medical expenses contained on that report. She recalled telling him that those bills were not paid and still have not been paid on the date of the settlement hearing. (Transcript of Settlement Contract Hearing Pgs. 14-15)

She also admitted under Mr. Spingola's questioning that she was not told that by settling her case the Respondent is not obligated to pay for the second surgery if in the future she changes her mind about that second surgery. When Mr. Spingola asked her if she was aware that if she tried her case she maintains the rights to future medical she indicated, "Now I do, yes." When informed by Mr. Spingola that the City, upon settlement of this case, could ask her to go back to work as a sanitation laborer. She indicated that she did not realize that her job as a ward secretary making sanitation laborer's wages could cease upon settlement of her claim. She decided she did not want the settlement. (Transcript of Settlement Contract Hearing Pgs. 20-23)

The claim proceeded to trial on October 24, 2012, almost 5 years after the settlement hearing. The case was heard at 2:00 p.m. and Mr. Spingola did not appear. Petitioner testified that when she sought Mr. Spingola for representation she spent 15-20 minutes in her first meeting with Mr. Spingola. She testified that she did not speak to Mr. Spingola about the case after that date. She never called him and he never called her. She is not aware of him doing anything to help her. She never asked him for advice and he never gave her advice. Mr. Spingola did not attend any hearings on her behalf and to the best of her knowledge did not talk to her doctor. She has no idea as to how Mr. Spingola could indicate that he spent six hours on her file. (Transcript at Arbitration Pgs. 32-34)

The Commission finds that Mr. Spingola's Quantum Meruit of $250.00 an hour for six hours of work should be paid by the Petitioner and Mr. Coven.

Petitioner's testimony at her settlement contract hearing supports Mr. Spingola's Quantum Meruit statement and her testimony regarding what Mr. Spingola did at the Arbitration Hearing was not credible.

In addition, it is apparent that Arbitrator Cronin forgot about the hearing regarding the fees on the settlement contract that took place 7 years before the actual Arbitration hearing. Mr. Coven had an obligation to point that out to the Arbitrator at the time of the Arbitration Hearing.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner pay to Joseph Spingola the sum of $1,500.00 per the services he rendered in representation of the Petitioner in claim number 06 WC18691.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:

JAN 0 2 2014

Charles J. DeVriendt

Michael J. Brennan

Ruth W. White

CJD/HSF
O: 11/6/13
049

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

JORDAN, AMANDA
Employee/Petitioner

Case# **05WC054728**
06WC018691

CITY OF CHICAGO
Employer/Respondent

14IWCC0002

On 1/2/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2675 COVEN LAW GROUP
LARRY COVEN
180 N LASALLE ST SUITE 3650
CHICAGO, IL 60601

0494 SPINGOLA, JOSEPH J LTD
47 W POLK ST
3RD FLOOR
CHICAGO, IL 60602

0464 CITY OF CHICAGO-WORK COMP
DAN NIXA
30 N LASALLE ST RM 800
CHICAGO, IL 60602

14IWCC0002

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Amanda Jordan
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # **05** WC **54728**

Consolidated cases: **06 WC 18691**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brian Cronin**, Arbitrator of the Commission, in the city of **Chicago**, on **October 24, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. [ ] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [ ] Was there an employee-employer relationship?
C. [ ] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [ ] What was the date of the accident?
E. [ ] Was timely notice of the accident given to Respondent?
F. [ ] Is Petitioner's current condition of ill-being causally related to the injury?
G. [ ] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [ ] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [ ] What temporary benefits are in dispute?
   [ ] TPD [ ] Maintenance [ ] TTD
L. [x] What is the nature and extent of the injury?
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [x] Other **Fee Petition of Attorney Joseph Spingola**

FINDINGS

On **December 9, 2005**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$55,648.32**; the average weekly wage was **$1,070.16**.

On the date of accident, Petitioner was **27** years of age, ***single*** with **5** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$57,776.89** for TTD, **$0.00** for TPD, **$92,531.31** for maintenance, and **$0.00** for other benefits, for a total credit of **$150,308.20**.

Respondent is entitled to a credit of **$0.00** under Section 8(j) of the Act.

Attorney Joseph Spingola, who filed a duplicate case on behalf of Petitioner (06 WC 18691), is not entitled to a fee for his efforts.

ORDER

RESPONDENT SHALL PAY PETITIONER PERMANENT PARTIAL DISABILITY BENEFITS OF $591.77/WEEK FOR 88.55 WEEKS BECAUSE THE INJURIES SUSTAINED CAUSED A LOSS OF USE, MAN AS A WHOLE, OF 17.71%, AS PROVIDED IN SECTION 8(D)2 OF THE ACT.

AS STIPULATED TO BY THE PARTIES, RESPONDENT IS ENTITLED TO A CREDIT FOR OVERPAYMENT OF MAINTENANCE BENEFITS IN THE AMOUNT OF $101.93.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

December 31, 2012
Date

JAN 2 - 2013

Petitioner testified that on December 9, 2005, she was employed as a laborer for Respondent in the Department of Streets and Sanitation. Her duties consisted of collecting trash and loading it into the truck. On December 9, 2005, Petitioner had just finished a stop and was preparing to climb back into the truck. As she was pulling on the truck door, whose handle was over her head and was stuck, she felt a pop in her right shoulder. Petitioner experienced immediate, severe pain and numbness in her right shoulder which immediately felt frozen. She advised the driver, and the supervisor was contacted. Petitioner was driven directly to Mercy Works Occupational Clinic and then immediately taken across the street to the emergency room at Mercy Hospital.

At Mercy Hospital emergency room, Petitioner was examined and the decision was made to immediately reduce the dislocation under anesthesia. The procedure was completed and she was directed to follow-up with William Heller, M.D., through the City of Chicago Occupational Clinic, Mercy Works.

On December 12, 2005, Petitioner sought the care of Dr. William Heller, a board-certified orthopedic surgeon. (Pet. Ex. #A). Dr. Heller examined Petitioner and was concerned about the instability in her shoulder. Dr. Heller ordered an MRI, stated that surgery may be necessary, and took Petitioner off of work. The MRI revealed a labral tear consistent with the recent dislocation. At that point, the Petitioner decided to get a second opinion from Ronald Silver, M.D. Dr. Silver opined that shoulder reconstruction surgery was necessary. Petitioner elected to return to Dr. Heller for treatment since Respondent referred her to Dr. Heller and it was easier. Dr. Heller referred Petitioner for physical therapy which failed and surgery was scheduled for February 3, 2006. On February 3, 2006 Dr. Heller performed a right shoulder arthroscopic Bankart repair and extensive debridement. The Petitioner made steady progress in physical therapy and in August 2006, she was transitioned into work conditioning. By September 22, 2006, the Petitioner plateaued in work conditioning and she was released with light-duty restrictions. The Respondent elected to accommodate the restrictions and Petitioner returned to work light duty as an office clerk.

Petitioner continued to experience significant pain even in a light-duty capacity but attempted to work through the pain. Petitioner could no longer handle the pain and on November 14, 2007, she returned to Dr. Silver. Dr. Silver recommended a repeat MRI. The MRI did not reveal a tear yet arthroscopic surgery was recommended to treat impingement. A second surgery was completed on June 19, 2008 consisting of subacromial decompression, acromioplasty, ligament transection, synovectomy, debridement, and distal clavicle resection. Following surgery, Petitioner continued to receive physical therapy until November 14, 2008. On November 14, 2008, Dr. Silver released Petitioner to light-duty work. Respondent was unable to accommodate Petitioner's restrictions and kept her on temporary total disability (maintenance). Petitioner attempted to find work within her restrictions but was not successful. Petitioner testified that the pain and reduced range of motion continued. She treated with Vicodin until it ran out and then prescription-strength Ibuprofen. Petitioner testified that she was having a hard time supporting her five children on her maintenance benefits. When finances got too tight, Petitioner returned to Dr. Silver on August 26, 2011 and requested a full-duty no restrictions release. Against his medical advice and judgment, Dr. Silver released Petitioner at her request. Petitioner has been back to work full-duty, no restrictions, since September 9, 2011.

Petitioner testified that since she returned to her duties on the garbage truck, the pain in her shoulder has continued. Petitioner testified that she relies on her left arm and constantly guards her right arm while performing her duties. Petitioner testified that her range of motion and strength are not the same and that she requires assistance from co-workers for the heavier trash. Petitioner testified that she continues to take 3-4 prescription-strength Ibuprofen a week when she experiences shoulder pain that she cannot handle.

Petitioner testified that before the shoulder injury, she used to help her son play baseball. Now she is unable to do so. She also finds that since the shoulder injury, she cannot bowl with her children. On the job, Petitioner testified, she has to work more slowly and be very careful when she is lifting. She stated that she has to compensate with her left arm when pulling, holding and hanging onto the truck. Petitioner testified that she has not returned to Dr. Silver for her ongoing pain because he already told her that he disagreed with her return to full-duty work.

On cross-examination, Petitioner testified that no doctor has told her that she cannot go bowling. She testified that she takes Ibuprofen 80 mg. and refills the prescription as needed. She stated that some months she refills the prescription, and some months she does not.

On redirect examination, Petitioner testified that she is afraid to bowl because she does not want to risk re-injury. So, Petitioner continued, she guards herself in all activities.

Petitioner further testified that she retained the services of Attorney Joseph Spingola (06 WC 18691) when she had difficulty reaching Attorney Larry Coven. She testified that she met with Joseph Spingola for 15-20 minutes and that she never called Mr. Spingola and he never called her. She testified that there were no hearings at which Mr. Spingola was present. She testified that, to her knowledge, Mr. Spingola never spoke with her doctors. Petitioner concluded that she did not know how Mr. Spingola spent six hours on her file.

Although properly notified, Joseph Spingola was not present for the hearing.

The Arbitrator concludes that although Joseph Spingola filed duplicate case 06 WC 18691, he is not entitled to a fee for his efforts.

On November 14, 2008, Dr. Silver declared Petitioner to be at maximum medical improvement with permanent restrictions of limited use of the right arm above shoulder level, no lifting over five pounds with the right arm and avoidance of repetitive-motion activities with the right shoulder. Yet, against Dr. Silver's judgment, but at the request of the Petitioner, Dr. Silver permitted her to return to the full-duty activities of a refuse collector for Respondent, effective August 29, 2011.

Since this release, Petitioner has worked as a refuse collector for the City of Chicago. She testified that she earns more money now than she earned prior to the right shoulder accident.

Based on the foregoing, the Arbitrator concludes that as a result of the accident of December 9, 2005, Petitioner has sustained a loss of use, man as a whole, of 17.71% thereof.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse notice/manifestation	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JON AUGUST,

Petitioner,

vs. NO: 11 WC 00477

STATE OF ILLINOIS – MENARD CORRECTIONAL CENTER,

Respondent.

14IWCC0003

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, date of accident, notice, causation, and the nature and extent of Petitioner's permanent partial disability, and being advised of the facts and law, reverses the Decision of the Arbitrator for the reasons stated below.

Findings of Fact and Conclusions of Law

1. Petitioner testified he has been a correctional officer ("CO") for Respondent for 11 years. He described the activity of bar-rapping as when a CO basically strikes the bars of cells with a steel bar to test their integrity. He had to rap the bars of about 50 cells each day. Petitioner also uses Folger Adams keys. "Sometimes" he uses both hands in using those keys. He has to repetitively open and close cell doors and chuck holes, and to pull on cell doors to ensure they are closed. Petitioner testified he also handcuffs inmates anywhere between 20 and 100 times. Some of the cell doors are difficult to open and require force. His job requires heavy gripping and grasping. Sometimes he has to flex his elbows to turn the cell door keys.

2. Petitioner further testified that in the course of his duties he began developing numbness and pain in his arms. He first noticed symptoms two, three, or four years ago. The symptoms progressed over time. However, he was not aware that he may have had a potentially repetitive traumatic injury.

3. Petitioner testified he first became aware of his condition and that the condition may be work-related when he was diagnosed by a doctor on December 22, 2010. Respondent filed its First Report of Injury on December 26, 2010.

4. Petitioner sought treatment from Dr. Brown. Initially, Dr. Brown recommended Petitioner wear splints on his elbows. The splints did not permanently alleviate Petitioner's symptoms. Dr. Brown performed surgery on both of Petitioner's elbows; on the right on December 2, 2011 and on the left on December 16, 2011. The delay between the diagnosis and surgeries was the result of Respondent's delay in authorizing the surgeries. Dr. Brown released Petitioner from treatment on March 2, 2012. He has recently returned to full duty work as a CO.

5. Petitioner also testified his condition improved after the surgeries. His current condition was "not too bad," "aside from the soreness." "They're still real stiff when [he] use them" too much and they start to ache. There was also "still a little weakness."

6. On cross examination, Petitioner testified Dr. Brown released him to full duty on January 9, 2012, and it appears Dr. Brown released him from treatment at that time. He had not gone back to see Dr. Brown since. Dr. Brown told him strength would return over time. Petitioner was in segregation for "little over a year." Prior to that he worked in the main visiting room, where he worked for about two years.

7. In December of 2010, Petitioner was working in the main visiting room. There is no bar rapping in the visiting room. However, he still had to cuff and uncuff inmates. When the inmates arrived Petitioner would "shake them down" and uncuff them. After the visit he has to shake the inmates down again. "Shake down" means a full strip search. Sometimes he recuffs the inmates after the visit. There is still a Folger Adams key at the main door. He estimated he would open the door with that key "probably 100, 150 times" a shift. There are no chuck holes in the visiting room.

8. Prior to about March of 2009, Petitioner had various cell house assignments. He was required to rap bars in those assignments. However, he was working the midnight shift so he would only have to rap the bars of 10 cells rather than 50 per shift. There would generally be five COs and only one or two would rap bars, so there were days he would not rap bars. He also would use the chuck holes to serve breakfast in the midnight shift.

9. Petitioner testified he remembered telling Dr. Brown that he had numbness and tingling for five years. Although he knew he had symptoms for five years he had no idea that it had anything to do with his work activities. He first learned of cubital tunnel syndrome when he was diagnosed.

10. Petitioner did not recall being aware of co-workers having been diagnosed and treated for the condition. He never heard of any co-workers having either carpal tunnel syndrome or cubital tunnel syndrome. He did not mention his symptoms to his general practitioner. Petitioner's lawyer sent him to Dr. Brown. Petitioner signed his Application for

Adjustment of Claim on December 23, 2010.

11. Petitioner had some physical therapy. He does not have any additional appointments with doctors or for physical therapy. Since his return to work, Petitioner has been able to perform his duties satisfactorily. He has not had any complaints from supervisors.

12. On redirect examination, Petitioner testified he had not had a previous work-related injury and had not filed a workers' compensation claim. He did not have complete knowledge of the Workers' Compensation Act. When Petitioner saw his lawyer he mentioned his symptoms, but did not know what he had or that it was work related. When he signed the Application for Adjustment of Claim, his lawyer told him he had to notify Respondent.

13. On re-cross examination, Petitioner testified he did not remember how he came to see his lawyer and did not know why he saw an attorney about his condition before seeing a doctor. He reiterated that he did not know of his condition or that it was work related until he was diagnosed.

14. Joseph Durham was called to testify by Petitioner. He testified he is a Major for Respondent and Petitioner works for him. Petitioner had worked for the witness for "practically a year." The witness had no complaints about Petitioner's work. He heard Petitioner's testimony about his job activities and he testified accurately.

15. On cross examination, the witness testified he knew that Petitioner worked the visiting room prior to working for him. There is no bar rapping in that assignment. Before that Petitioner worked the midnight shift. Since his return to work, Petitioner had no problems performing his duties and he not complained about his elbows or lack of strength.

16. The medical records reveal that Petitioner presented to Dr. Brown on December 22, 2010 with problems in both arms. Dr. Brown indicated that Petitioner was a CO at Menard and told him his job entailed turning Folger-Adams keys repeatedly 50 times an hour. He also opens and closes cell doors, pulls on cell doors, cuffs and uncuffs inmates, and raps bars. Petitioner reported a history of numbness and tingling for five years. After examination, Dr. Brown concluded that Petitioner had symptoms of bilateral cubital tunnel syndrome and possibly carpal tunnel syndrome. He attributed Petitioner's condition to his work activities. Dr. Brown ordered an EMG/NCV. Petitioner was given splints and told to take over-the-counter anti-inflammatories. He released Petitioner to work full duty.

17. The EMG/NCV taken on December 23, 2010 revealed "mild, left worse than right demyelinative ulnar neuropathies across the elbows" but no carpal tunnel syndrome.

18. On December 2, 2011, Dr. Brown performed "right cubital tunnel release with an anterior submuscular transportation of the ulnar nerve with myofascial lengthening of the flexor-pronator tendon origin." On December 16, 2011, Dr. Brown performed the same cubital

tunnel surgery on the left.

The Arbitrator acknowledged that Petitioner had subjective symptoms of cubital tunnel syndrome for four to five years prior to the date he filed his Application for Adjustment of Claim. That fact is supported by Petitioner's testimony as well as his report to Dr. Brown. Petitioner also testified that he did not inform anybody about his symptoms or seek treatment until he was eventually diagnosed with cubital tunnel syndrome on December 22, 2010. The Arbitrator found Petitioner's notice of accident was adequate because he filed his report of accident within a few days of his diagnosis by Dr. Brown. She also noted that Respondent was not prejudiced by any delay in the report of accident.

It is axiomatic in workers' compensation law that the Petitioner has the burden of proving all elements of his claim for it to be compensable. *See, Hannibal, Inc. v. Industrial Commission*, 38 Ill. 2d 473 (1967). The date of manifestation for repetitive trauma injuries is the date on which the claimant became aware of the condition and reasonably should have known it may be work related. *See, Peoria County Bellwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524 (1987). Therefore, the manifestation date can be the date of diagnosis, but it does not necessarily have to be that date.

In the case before the Commission, it is clear that Petitioner had symptoms of cubital tunnel syndrome for at least four to five years prior to his report of accident. It also seems clear to the Commission that Petitioner was aware that his condition was likely related to his work activities prior to his diagnosis. That is the only explanation for his consulting an attorney prior to seeking medical treatment for his condition. Therefore, the Commission finds that Petitioner's testimony that he was unaware of his condition or that it may be work-related prior to his diagnosis by Dr. Brown is not credible. In addition, the Commission finds questionable Petitioner's assertion that he had not heard of any co-workers having repetitive trauma conditions or that they had filed workers' compensation claims for such conditions. The Commission notes that repetitive trauma claims from Correctional Officers specifically at Menard Correctional Center were the subject of intense local media scrutiny.

The Arbitrator reasoned that the reason for the notice requirement is to give the Respondent the opportunity to investigate promptly the facts of the alleged accident. While she also noted that the statutory 45-day notice requirement was jurisdictional in nature, she also noted that the notice requirement must be liberally construed. In finding Petitioner provided adequate notice the Arbitrator determined that Respondent was not prejudiced by any delay in Petitioner's notice of accident.

The Arbitrator is correct that the ability to promptly investigate the facts related to an alleged work accident is a basis for requiring prompt notice. However, that factor is not necessarily the only reason for the requirement. In the case now before the Commission, Respondent could have been prejudiced because his duties as CO changed over the years of his service making it difficult to determine what exact work activities may or may not have contributed to Petitioner's symptoms. In addition, if Petitioner had promptly informed Respondent of his symptoms, Respondent would have had the opportunity to modify his work activities. Such modification of work activities along with prompt conservative treatment may

have resolved Petitioner's condition without the need for surgery, substantially reducing Respondent's financial liability.

The Commission concludes that Petitioner has failed to sustain his burden of establishing a credible date of manifestation or of proving he provided adequate notice of his repetitive trauma injuries within 45-days of such date. Because the Commission denies compensation based on Petitioner's failure to prove date of manifestation and prompt notification after that date, all other issues are moot.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator issued on October 9, 2012 is hereby reversed and compensation is denied.

DATED: JAN 0 2 2014

Ruth W. White

Daniel R. Donohoo

Charles J. DeVriendt

RWW/dw
O-12/4/13
46

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

AUGUST, JON
Employee/Petitioner

Case# **11WC000477**

MENARD CORRECTIONAL CENTER
Employer/Respondent

14IWCC0003

On 10/9/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.13% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

4075 FISHER KERHOVER & COFFEY
JASON E COFFEY
P O BOX 191
CHESTER, IL 62233

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
KENTON J OWENS
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
201 E MADISON ST SUITE 3C
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

OCT 9 2012

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jon August
Employee/Petitioner

v.

Menard Correctional Center
Employer/Respondent

Case # 11 WC 00477

Consolidated cases: _____

14IWCC0003

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Deborah L. Simpson**, Arbitrator of the Commission, in the city of **Herrin**, on **March 21, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **accident, notice, unpaid medical,and nature and extent**

FINDINGS

On **December 22, 2010**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$56,948.00**; the average weekly wage was **$1,095.15**.

On the date of accident, Petitioner was **41** years of age, ***married*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

ORDER

The Petitioner has proven a compensable injury pursuant to the Act and that the treatment was reasonable and necessary.

The respondent shall pay the petitioner $657.09 / week for 75.9 weeks as the petitioner has sustained a 15% loss of both his right and left arms.

The Respondent shall pay the outstanding medical bills for diagnosis and treatment of the Petitioner related to cubital tunnel syndrome pursuant to the fee schedule or agreement pursuant to the Worker's Compensation Act. The Respondent shall be given credit for all bills previously paid by the Respondent or by the group health insurance carrier.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Deborah L. Simpson
Signature of Arbitrator

October 9, 2012
Date

OCT - 9 2012

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jon August,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**No. 11 WC 00477**
	)	
Menard Correctional Center,	)	
	)	14IWCC0003
Respondent.	)	
	)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on December 22, 2010, the petitioner and the respondent were operating under the Illinois Worker's Compensation or Occupational Diseases Act and that their relationship was one of employee and employer. The Petitioner's current condition of ill-being is causally connected to this injury or exposure.

At issue in this hearing is as follows: (1) did the petitioner sustain accidental injuries on December 22, 2010 that arose out of and in the course of his employment with the respondent; (2) based upon the manifestation date was notice of the accident given by the petitioner to the respondent within the time limits stated in the Act; (3) was notice given to Cindy Cowell, Worker's Compensation Coordinator on December 26, 2010 and was it proper notice; (4) Is the respondent liable for the unpaid medical bills that are described in Petitioner's Exhibit #6; (5) the nature and extent of the injury.

STATEMENT OF FACTS

The Petitioner is employed by the Respondent as a correctional officer and has been so employed for eleven years. As a correctional officer the Petitioner is required to bar rap, which requires him to take a 1 ½ foot length of steel pipe and strike the bars on the cells to check their integrity one time each day. The bars on the cells are divided in sections so you have to rap from top to bottom on each cell. He must do this on 50 cells per day. He also uses a Folger-Adams key to open the doors. They are also used to open chuck holes which are cut out of a door that you use to cuff inmates. Cuffing inmates requires using a key as well, but not a Folger-Adams key. Petitioner cuffs inmates everyday 20 to 50 or 100 times per day. He is right handed. Some of his responsibilities include heavy gripping and grasping. The Petitioner has read Dr. Sudekum's job summary and he believes it is accurate.

The Petitioner testified that he developed pain, tingling and numbness in his hands about four years ago. The symptoms progressed over time. On cross-examination the Petitioner

testified that he developed the symptoms more than five years ago and on December 22, 2010 he told Dr. Brown it he had a five year history of numbness and tingling. (P. Ex. 2) The Petitioner testified further that he first learned that he had bilateral cubital tunnel syndrome on December 22, 2010, when he was diagnosed with the problem by Dr. Brown. He believed that the condition was related to his job. On December 26, 2010, four days after he was diagnosed with cubital tunnel he notified the Respondent and Petitioner's exhibit #1, an Illinois Form 45 was filled out.

On cross examination the Petitioner provided a more detailed description of his job. Currently he is assigned to the segregation unit on the seven to three shift. He has been there a little over one year. He has bar raps and has chuck holes to open for breakfast in segregation. Prior to that, he spent two years in the main visiting room working from eight o'clock to four o'clock. In the main visiting room there is no bar rapping, the inmates are all escorted to the visiting room by other correctional officers. He would have to shake the prisoner down sometimes and take their cuffs off and then bring them to the room where they see their visitors. After the visit is over he has to do a full search of the inmate. Occasionally he would cuff an inmate and bring him back to his cell. In the main visiting room he used a Folger-Adams key about 100 to 150 times. There are no chuck holes in the main visiting room. It was while he was working in the main visiting room that he noticed the problem with his hands.

Before he worked in the main visiting room he was assigned to various cell houses. He worked various shifts including mid-nights. On the midnight shift there is no bar rapping. In 2009 there was five correctional officers assigned to a shift, the officers would all do the bar rapping so there were times when he did not have to bar rap on a shift.

The Petitioner testified that he does not know why he went to his attorney before he saw a doctor for the numbness and tingling in his hands. The Petitioner filled out the application for adjustment of claim on December 23, 2010, the day after he saw Dr. Brown. (Arbitrators Exhibit #1) He did not report the injury to the Respondent until December 26, 2010 when he filled out the form. (R. Ex. 1, 2, 6) The Petitioner testified that he was not aware of cubital tunnel syndrome or carpal tunnel syndrome before he saw Dr. Brown.

Respondent's exhibit number 6 is an incident report signed by the Petitioner and a Major Olson of the Menard Correctional Center and is dated December 26, 2010. It is an incident report that documents that the Petitioner was diagnosed with bilateral cubital tunnel syndrome and that a Workman's Comp packet was done with a supervisors report.

The Petitioner went to see Dr. David M. Brown at the Orthopedic Center of St. Louis; he was referred to Dr. Brown by his attorney. He first saw Dr. Brown on December 22, 2010. (P. Ex. 2) He reported to Dr. Brown that he was a correctional officer, working 37 ½ hours per week, that his job requires turning Folger-Adams keys fifty times per hour (400 times per shift), cuffing and uncuffing inmates pushing and pulling cell doors and bar rapping. He described having numbness and tingling in his hands, primarily little and ring fingers and decreased strength. (P. Ex. 2) Dr. Brown diagnosed cubital tunnel syndrome, bilaterally and possibly

carpal tunnel syndrome as well, ordered nerve conduction studies that were done that day by Dr. Daniel Phillips, and ordered the Petitioner to wear pillow splints over both elbows at night and take a non-steroidal anti-inflammatory. The nerve conduction studies revealed that the Petitioner did have bilateral cubital tunnel syndrome. The Petitioner was allowed to return to work full duty with no restrictions. (P. Ex. 2) It was Dr. Brown's opinion that the Petitioner's work activities would be considered in part an aggravating factor in the need for further evaluation and treatment for both cubital tunnel and carpal tunnel syndrome. (P. Ex. 2)

The Petitioner returned to Dr. Brown on March 2, 2011, claiming no improvement in his symptoms. At that time Dr. Brown discussed the nerve conduction results with the Petitioner, he discussed conservative treatment alternatives with the Petitioner but felt that based upon the fact that he had no relief over the past two months he felt that the prognosis for resolution with conservative treatment was poor. He recommended surgery, an ulnar nerve transposition bilaterally. He told the Petitioner if he could get the surgery approved through worker's compensation that he would be happy to do the procedures, but if Petitioner was not able to get it approved through worker's compensation and had to do it through his group health insurance that he would be happy to refer the Petitioner to a qualified hand surgeon who could perform the surgery as he, Dr. Brown does not take Petitioner's private insurance. (P. Ex. 2)

On December 2, 2011 the Petitioner had surgery by Dr. Brown on his right elbow for cubital tunnel syndrome. He tolerated the surgery well and was returned to work with restrictions on December 12, 2011. On December 16, 2011 the Petitioner had surgery on his left elbow for cubital syndrome. He tolerated that procedure well also. He was returned to work on limited duty with restrictions on December 26, 2011. (P. Ex. 2) He was also referred for physical therapy at Apex Network PT beginning on December 5, 2011. He successfully completed the physical therapy. (P. Ex. 4)

The Petitioner testified that he had the surgery done as soon as the State allowed him to have it. That he did participate in physical therapy as directed and that he was returned to work full duty with no restrictions on March 2, 2012. Aside from the soreness that he still experiences he feels that he has greatly improved. If he uses his hands too much they get sore. He can do his job, like he did before the problems. He can perform his duties satisfactorily without any complaints from supervisors.

Major Joseph Durham testified on behalf of the Respondent. Major Durham is the supervisor for the Petitioner currently and has been so for a little over one year. He has no complaints with the Petitioner as far as doing his job is concerned. He agrees with the Petitioner that there is no bar rapping in the main visitors area.

CONCLUSIONS OF LAW

The burden is on the party seeking the award to prove by a preponderance of credible evidence the elements of the claim, particularly the prerequisites that the injury complained of

arose out of and in the course of the employment. *Hannibal, Inc. v. Industrial Commission,* 38 Ill.2d 473, 231 N.E.2d 409, 410 (1967)

An injury is accidental within the meaning of the Worker's Compensation Act when it is traceable to a definite time, place and cause and occurs in the course of the employment unexpectedly and without affirmative act or design of the employee. *Matthiessen & Hegeler Zinc Co. v Industrial Board,* 284 Ill. 378, 120 N.E. 2d 249, 251 (1918)

An injury arises out of one's employment if it has its' origin in a risk that is connected to or incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Technical Tape Corp. vs IndustrialCommission,* 58 Ill. 2d 226, 317 N.E.2d 515 (1974) "Arising out of" is primarily concerned with the causal connection to the employment. The majority of cases look for facts that establish or demonstrate an increased risk to which the employee is subjected to by the situation as compared to the risk that the general public is exposed to.

Section 6(c) of the Illinois Workers' Compensation Act states that notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. Section 6(c) (2) states that "[n]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy." *820 ILCS 305/6(c)* (West 2004)

The purpose of the notice provisions is to enable the employer to investigate promptly and to ascertain the facts of the alleged accident. *City of Rockford v. Industrial Commission,* 214 N.E.2d 763 (1966) The giving of notice under the Act is jurisdictional and a prerequisite of the right to maintain a proceeding under the Act. However, the legislature has mandated a liberal construction on the issue of notice. *S&H Floor Covering v. The Workers Compensation Commission,* 870 N.E.2d 821 (2007)

We therefore hold that the date of an accidental injury in a repetitive trauma compensation case is the date on which the injury "manifests itself." Manifests itself means the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. *Peoria County Belwood Nursing Home vs Industrial Commission,* 115 Ill.2d 524, 505 N.E.2d 1026, 1029, 106 Ill.Dec. 235 (1987)

Did the Petitioner sustain accidental injuries on December 22, 2010 that arose out of and in the course of his employment with the Respondent?

The Petitioner testified that he had been experiencing numbness and tingling for between 4 years and 5 ½ years but that he did nothing about it until he saw a lawyer in December of 2010 who referred him to Dr. David Brown. Dr. Brown took a history and examined the Petitioner

and determined that he had bilateral cubital tunnel syndrome and perhaps bilateral carpal tunnel syndrome as well. The Petitioner was sent to Dr. Phillips for nerve conduction tests which supported the diagnosis of cubital tunnel syndrome. The Petitioner gave a history of employment that was consistent with cubital tunnel syndrome in the beginning of his four to five year onset, when he was working in the cell houses and was required to bar rap, use the Folger-Adams key to lock and unlock cells and was handcuffing and unhandcuffing inmates. During that time period he testified that there were five guards to a unit so they did not have to bar rap every day. At the time the Petitioner began to complain of his condition he had been working in the main visiting room for two years, where he did not have bar rapping to do and did not have cells to open and close. He was using the Folger-Adams key 100 to 150 times per eight hour shift.

While the fact that the Petitioner reported to doctors that he had the symptoms beginning 5 years ago and he testified on direct examination it was four years ago and on cross examination five years ago, and that he never told anyone during that four or five years it is clear that he did have the subjective symptoms and the objective nerve conduction study to verify the condition. It is also suspect that he went to an attorney before he saw a doctor and that the doctor was recommended by the attorney.

When Dr. Brown determined that the Petitioner had cubital tunnel syndrome he opined based upon the description of the Petitioner's job duties to him as well as his own personal knowledge of what the correctional officers job duties are, that his work duties were at least an aggravating factor in causing the Petitioner's condition. No evidence to the contrary was offered.

The Petitioner has proven by a preponderance of the evidence that he sustained an injury that arose out of and in the course of his employment with the Respondent.

Based upon the manifestation date was notice of the accident given by the petitioner to the respondent within the time limits stated in the Act, was notice given to Cindy Cowell, Worker's Compensation Coordinator on December 26, 2010 and was it proper notice?

The Petitioner testified that the symptoms began to manifest either four or five years ago, that he never said anything about them and he did not seek medical treatment for them until December 22, 2010. That he found out on December 22, 2010 that he had cubital tunnel syndrome; and on December 23, 2010 he signed the IWCC Application for adjudication of a claim and then on December 26, 2010 he notified the Respondent. Technically the notice was given within four days of the diagnosis the day that the Petitioner testified that he knew he had cubital tunnel and that it was related to his work duties. There was no evidence presented to establish that the Respondent had a diagnosis at any time before the twenty-second of December or that the Respondent was prejudiced by the Petitioner waiting four or five years to get a diagnosis and treatment. The Worker's Compensation Act provides, in relevant part that "[n]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on

arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy." *820 ILCS 305/6(c)* (West 2004)

Based upon the evidence presented and admitted the time between the onset of symptoms and the seeking of diagnosis and treatment are not a bar to the proceedings in this case or the ability of the Respondent to seek benefits under the Act.

Is the respondent liable for the unpaid medical bills that are described in Petitioner's Exhibit #6?

Since the Petitioner has proven a compensable act by a preponderance of the evidence the Respondent is liable for the unpaid medical bills described in Petitioner's exhibit 6 that are related to the diagnosis and treatment of cubital tunnel syndrome that the Petitioner sustained on December 22, 2010.

What is the nature and extent of the injury?

Surgery consisted of right cubital tunnel release with an anterior submuscular transposition with myofascial lengthening of the flexor pronator tendon origin. And two weeks later left cubital tunnel release with an anterior submuscular transposition with myofascial lengthening of the flexor pronator tendon origin. The Petitioner completed a course of physical therapy and returned to work. He states that presently, aside from the soreness that he still experiences, he feels that he has greatly improved. If he uses his hands to much they get sore. He can do his job, like he did before the problems. He can perform his duties satisfactorily without any complaints from supervisors.

As a result of his injuries the petitioner has sustained a loss of 15% of the right arm and 15% of the left arm pursuant to section 8 of the Act.

ORDER OF THE ARBITRATOR

The respondent shall pay the petitioner $657.09 / week for 75.9 weeks as the petitioner has sustained a 15% loss of both his right and left arms.

The Respondent shall pay the outstanding medical bills for diagnosis and treatment of the Petitioner related to cubital tunnel syndrome pursuant to the fee schedule or agreement pursuant to the Worker's Compensation Act.

Deborah L. Simpson
Signature of Arbitrator

October 9, 2013
Date

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Stanford Dorsey,
Petitioner,

vs. No. 13 WC 03624

City of Chicago,
Respondent.

14IWCC0004

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the sole issue of nature and extent of the permanent partial disability, and being advised of the facts and law, modifies the July 1, 2013 decision of Arbitrator Deborah Simpson as stated below and otherwise affirms and adopts the decision of the Arbitrator, which is attached hereto and made a part hereof. After considering the record as a whole, and for the reasons set forth below, the Commission modifies the permanent partial disability award of the Arbitrator. Arbitrator Simpson awarded Petitioner 17% loss of use of the person as a whole, pursuant to §8(d)2, for his biceps tear at the elbow. The Commission finds that the Arbitrator's permanency award should not have been based upon §8(d)2, but should have been awarded pursuant to §8(e), and hereby modifies the award to 37.5% loss of use of the left arm. The Commission further finds that Respondent is entitled to a credit for a 1998 settlement with Petitioner for 30% of the left arm, leaving Respondent responsible for 7.5% of the left arm for this injury.

On February 8, 2010, Petitioner, an electrician working to maintain street lights, sustained an injury to his left arm when he assisted a co-worker in moving a 350-400 pound manhole cover. He was diagnosed with a biceps tear at the left elbow and underwent surgical repair of the tear on February 15, 2010. Following extensive occupational therapy, Petitioner was released to return to work full duty as of September 17, 2010. He returned to his former position and testified that he was able to perform all of his duties. However, a year after his return, he requested a transfer to the traffic light division, which has less demanding lifting requirements.

§8(e) vs. §8(d)2

Arbitrator Simpson relied upon *Will County Forest Preserve v. IWCC*, 2012 Ill. App. (3d) 110077WC, *Dobczyk v. Lockport Twp. Fire Protection Dist.*, 12 IWCC 1367, and *Veath v. State of Illinois, Menard C.C.*, 10 WC 12821, for the proposition that shoulder, biceps and elbow injuries are now classified as person as a whole injuries under §8(d)2 of the Act, instead of scheduled arm injuries under §8(e) of the Act.

The Commission acknowledges that the Appellate Court in *Will County* determined that shoulder injuries are no longer to be considered scheduled injuries under §8(e), but are now to receive person as a whole awards under §8(d)2. In this case, however, Petitioner's injury did not involve his shoulder, but his biceps, and the tear occurred at the left elbow, not at the upper arm.

Arbitrator Simpson cited *Veath* for the holding that elbows are non-scheduled body parts and fall under §8(d)2, like shoulders, pursuant to *Will County*. In *Veath*, Petitioner suffered two injuries, one to the right shoulder and one to the left elbow. The Arbitrator in *Veath* awarded Petitioner 22.5% of the right arm for his shoulder injury and 17.5% of the left arm for his elbow injury. On appeal, the Commission modified the Arbitrator's award for the right arm to comply with *Will County*. However, the Commission affirmed the award of 17.5% of the left arm for the Petitioner's elbow injury. Therefore, Arbitrator Simpson's reliance on *Veath* for the proposition that elbow injuries are now considered non-scheduled injuries is misplaced. Petitioner's biceps injury which occurred at the elbow fell within the scheduled injuries listed in §8(e) of the Act.

Therefore, the Commission modifies the Arbitrator's award to change the permanent partial disability award of 17% loss of use of the person as a whole under §8(d)2 to 37.5% loss of use of the left arm pursuant to §8(e).

§8(e)17 Credit

Arbitrator Simpson denied Respondent credit for a prior settlement with Petitioner for a left arm injury. In 1998, Respondent settled Petitioner's claim for a torn rotator cuff injury for 30% loss of use of the left arm. Section 8(e)17 of the Act provides as follows:

> In computing the compensation to be paid to any employee who, before the accident for which he claims compensation, had before that time sustained an injury resulting in the loss by amputation or partial loss by amputation of any member, including hand, arm, thumb or fingers, leg, foot or any toes, such loss or partial loss of any such member shall be deducted from any award made for the subsequent injury. For the permanent loss of use or the **permanent partial loss of use of any such member** or the partial sight of an eye, for which compensation has been paid, **then such loss shall be taken into consideration and deducted from any award for the subsequent injury.**

820 ILCS 305, §8(e)17 (emphasis added). Arbitrator Simpson found that although the 1998 settlement was based upon §8(e) loss of use of the arm, the Appellate Court in *Will County* had subsequently ruled that shoulder injuries properly belonged under §8(d)2. The Arbitrator found that the §8(e)17 credit provision does not apply to §8(d)2 awards and reasoned that, since Petitioner's 1998 settlement should have fallen under §8(d)2, the credit provision was not available to reduce Respondent's liability for this 2010 injury.

After reviewing all of the evidence and the relevant case law, the Commission finds that Petitioner's 1998 settlement occurred prior to the Appellate Court's decision in *Will County* and that the permanent partial disability settlement for Petitioner's shoulder injury fell properly under §8(e) at the time of the settlement. Based on the Commission's determination above, Petitioner's biceps injury in this case also fell properly under §8(e) of the Act. Therefore, credit was available for Respondent's prior settlement for 30% of the left arm, leaving Respondent liable for 7.5% loss of use of the left arm for this injury.

Arbitrator Simpson's reliance on *Dobczyk v. Lockport Twp. Fire Protection Dist.*, 12 IWCC 1367, in support of her denial of credit for the prior shoulder settlement is misplaced. In *Dobczyk,* Petitioner suffered two shoulder injuries, one in 2003 and another in 2010. The Arbitrator awarded Petitioner a nature and extent award under §8(e) for the 2003 injury. Following a hearing for the 2010 injury, the Arbitrator awarded Petitioner permanency under §8(d)2, pursuant to *Will County.* The Arbitrator in *Dobczyk* refused to give Respondent credit for the prior award under §8(e)17, because that credit is available only when the permanency awards or settlements are under §8(e).

In this case, both Petitioner's prior settlement and the current award fall within the scope of §8(e). Therefore, credit for the prior settlement is available to Respondent under §8(e)17. The Commission finds that Petitioner is entitled to 37.5% loss of use of the left arm for his 2010 biceps tear and that Respondent is entitled to credit under §8(e)17 of 30% loss of use of the left arm for the 1998 settlement.

All else is otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $664.72 per week for a period of 15.375 weeks, as provided in Section 8(e) of the Act, for the reason that the injuries sustained caused the loss of use of 37.5% loss of use of Petitioner's left arm, and Respondent is entitled under §8(e)17 to a credit for a 1998 settlement for 30% loss of use of Petitioner's left arm.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under Section 19(n) of the Act, if any.

14IWCC0004

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $10,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:

JAN 0 3 2014

Daniel R. Donohoo

Kevin W. Lamborn

Thomas J. Tyrrell

o-12/03/13
drd/dak
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

DORSEY, STANFORD
Employee/Petitioner

Case# **13WC003624**

CITY OF CHICAGO
Employer/Respondent

14IWCC0004

On 7/1/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

WILLIAM B MEYERS & ASSOC
640 N LASALLE ST
SUITE 555
CHICAGO, IL 60654

0010 CITY OF CHICAGO DEPT OF LAW
MICHAEL GENTITHES
30 N LASALLE ST 8TH FL
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Stanford Dorsey
Employee/Petitioner

v.

City of Chicago
Employer/Respondent

Case # 13 WC 003624

Consolidated cases: _____

14IWCC0004

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Deborah L. Simpson**, Arbitrator of the Commission, in the city of **Chicago**, on **April 26, 2013**. By stipulation, the parties agree:

On the date of accident, **February 8, 2013**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned **$63,632.40**, and the average weekly wage was **$1,223.70**.

At the time of injury, Petitioner was **55** years of age, ***single*** with **0** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**.

14IWCC0004

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of **$664.72**/week for a further period of **85** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **a 17% loss of the man as a whole.**

Respondent shall pay Petitioner compensation that has accrued from **02/08/2010** through **05/26/2013**, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Deborah L. Simpson
Signature of Arbitrator

June 29, 2013
Date

JUL -1 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Stanford Dorsey,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**No. 13 WC 03642**
	)	
City of Chicago,	)	
	)	**14IWCC0004**
Respondent.	)	
	)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on February 8, 2013, the Petitioner and the Respondent were operating under the Illinois Worker's Compensation or Occupational Diseases Act and that their relationship was one of employee and employer. On that date the Petitioner sustained an accidental injury or was last exposed to an occupational disease that arose out of and in the course of the employment. They further agree that the Petitioner gave the Respondent notice of the accident within the time limits stated in the Act and that the Petitioner's current condition of ill-being is causally connected to the accidental injury sustained.

At issue in this hearing is as follows: (1) the nature and extent of the injury.

STATEMENT OF FACTS

The Petitioner has been employed by the Respondent for twenty-four years as an electrician. He worked in the bureau of electricity maintaining street lights. His job included painting, lifting poles that were down, fixing poles that were out, stringing temporary wire the wiring was bad, which included pulling wire from one light to another and any other required maintenance.

On February 8, 2010, he was working with his crew at 79th & St. Louis on lights that were out. They determined that they were going to need to go underground to work on this particular problem. They had to lift the manhole cover, which weighed between 350 and 400 pounds. He and his partner had a grip on each side, lost their balance and in the struggle not to fall he felt immediate pain in his left arm and dropped the manhole cover.

He sought medical attention immediately at Mercy Works where he had x-rays and was sent for an MRI. The MRI revealed a complete disruption of the biceps tendon retraction at least 4.5 cm. Petitioner had a hollow deformity in the distal biceps tendon area, could not flex his elbow and had tenderness in the left forearm as well. The Petitioner was referred to Dr. William Hellar at Woodland Ortho. (P. Ex. 1)

Petitioner saw Dr. Hellar on February 12, 2010, who after examining the Petitioner and reviewing the MRI results informed the Petitioner he needed surgery to repair the ruptured tendon. (P. Ex. 1,3) As a result of the work-related accident on February 8, 2010, Petitioner sustained (1) a complete rupture of the left distal biceps tendon, which retracted from the radial tuberosity at least 4.5 cm, (2) a retraction of the stump into proximal arm, and (3) a sprain of the radial collateral ligament. (P. Ex. 3).

On February 15, 2010, the Petitioner had surgery, at Mercy Hospital, performed by Dr. Hellar. Specifically the injury required surgical intervention in the form of a left elbow distal biceps tendon rupture repair and radial nerve neurolysis. (P. Ex. 3). The tendon repair first required a debridement of the biceps tendon before the tendon could be reattached to the bone. (P. Ex. 3). Further, the surgical operation performed included drilling a hole into Petitioner's bone and anchoring the biceps tendon back to the bone with a 7mm screw and anchor system. (P. Ex. 3).

The Petitioner went through a course of physical therapy and then work hardening, through Mercy at the Chatham Hand Rehab. (P. Ex. 2) The Petitioner was released to return to work full duty with no restrictions on September 17, 2010. (P. Ex. 1)

The Petitioner testified that after the surgery he still had pain in his left arm. He took the prescription pain medications three times per day while he was doing physical therapy and off work. He stated that at the time he returned to work his left arm was not as strong as it had been prior to the injury. Prior to the injury, he never had trouble performing his job duties.

The Petitioner returned to work for the Respondent in September of 2010 at his same position with his same duties and responsibilities at the same rate of pay. The Petitioner testified that he was able to perform all of the tasks required by the job but he was still experiencing pain in his left arm. He testified that he took over the counter ibuprofen for the pain. The Petitioner testified that he continued to work in that position for about a year. He then switched to working on traffic lights which was a less strenuous job than the street lights were. He testified that the traffic lights that need to be lifted weigh only ten to fifteen pounds. He stated that the job was less strenuous and he only had to take ibuprofen occasionally for the pain in that assignment.

The Petitioner testified that he had no trouble or problems doing the job when he switched from street lights to traffic lights. The Petitioner testified that he did not miss any work because of the injury to his arm once he was released to return to work full duty on September 17, 2010. The Petitioner testified that he has not worked for the Respondent since January 7, 2013.

The Petitioner testified that the injury he sustained on February 8, 2010, still causes him problems to date. He stated that although once he returned to full duty work he did not miss any work days because of the injury or the pain, he still has pain and residual effects.

The Petitioner testified that currently he has problems lifting heavy objects. Prior to the accident he lifted weights, recreationally, not competitively; he could easily lift eighty pounds. He testified that they have a facility at his apartment complex and he lifted steel weights, bench pressed, did curls, bicep curl and that he lifted about 80 pounds. He no longer does that. He has tried to lift the 80 pounds he used to lift but cannot because his arm is not as strong as it used to be and it causes pain. He stated that he is unable to help people move or lift furniture and he cannot carry heavy objects.

The Petitioner testified that he is right hand dominant so he does not have any trouble dressing himself, writing, eating or cooking and is otherwise able to perform the activities of daily living without incident.

The Petitioner testified that he does not currently have any appointments for further medical treatment or medications and does not expect to make any. He states that he uses over the counter ibuprofen for the occasional pain he experiences.

The Petitioner admitted that he had a previous work injury in November of 1995, while working for the Respondent. He received treatment and filed a worker's compensation claim for that injury. That injury was to his left shoulder and he settled the claim for 30% loss of the use of the left arm which was $28,590.80. (R. Ex. 1) Petitioner testified that the injury at that time was to his rotator cuff, and did not involve the biceps tendon. He testified that after treatment he returned to his regular job and did not require any time off for that injury after he was treated. He was able to do his job without problems until the injury of February 8, 2010.

CONCLUSIONS OF LAW

The burden is upon the party seeking an award to prove by a preponderance of the credible evidence the elements of his claim. *Peoria County Nursing Home v. Industrial Comm'n*, 115 Ill.2d 524, 505 N.E.2d 1026 (1987). This includes the nature and extent of the petitioner's injury.

Will County Forest Preserve v. Workers' Compensation Commission, 2012 Ill. App. (3d) 110077WC, *Dobczyk v. Lockport Township Fire Protection District*, 12 IWCC 1367, and *Veath v. Illinois, State of Menard Correctional Center*, 10 WC 12821, changed shoulder, biceps, and elbow injury classifications under the Act. Instead of being awarded under Section 8(e), the aforementioned body parts are now classified under man as a whole awards pursuant to Section 8(d)2 of the Act.

In this case, the credible evidence showed that the Petitioner suffered a torn left bicep tendon at the elbow, which was surgically repaired in an outpatient procedure by Dr. Heller. Following physical therapy, the Petitioner was able to return to work full duty approximately

seven months after the injury. At the time of his return, the Petitioner worked in the same position for the same pay and with the same hours as he had prior to his injury. The Petitioner also testified that he was able to perform all the duties attendant to that position. Petitioner testified that he requested the reassignment from street lights to traffic lights on his own, not because of any restrictions placed upon him by his treating physicians. Because the Petitioner is right-handed, his injury to his left arm has not affected his daily activities other than preventing him from lifting weights up to 80 pounds and doing other heavy lifting activities.

Due to Petitioner's injuries, treatment, and current residual symptoms and limitations, pursuant to Section 8(d)2 of the Act, he is entitled to an award of 17% loss of the man as a whole.

Is the Respondent Entitled to a Credit for the Previous Work Injury Settlement from 1995?

In *Dobczyk*, the Commission affirmed the Arbitrator's decision to deny respondent a credit for a previous award paid to Petitioner. The Petitioner in *Dobczyk* suffered a shoulder injury in 2003. He was diagnosed with a mild grade two AC separation, prescribed medication and removed Petitioner from work. Shortly after petitioner returned to work he sustained an aggravation of his AC separation. Petitioner underwent a distal clavicle resection, then went through a course of physical therapy and was returned to work full-duty by May 2004. Petitioner was awarded a nature and extent award for permanent partial disability pursuant to Section 8(e) of the Act subsequent to this initial injury.

Petitioner worked unimpeded until March 2010, when Petitioner sustained a work-related injury. Petitioner was diagnosed with a SLAP tear, supraspinatus tear, and partial rotator cuff tear in his left shoulder. Petitioner underwent surgery to repair all of the conditions followed by another course of physical therapy. The Arbitrator in *Dobczyk* awarded Petitioner a nature and extent award for permanent partial disability pursuant to Section 8(d)2 of the Act subsequent to this second injury. The Arbitrator found Respondent was not entitled to a credit for the previous shoulder award based on the court's ruling in the *Will County Forest Preserve v. Workers' Compensation Commission* Decision. The changed classification of the body parts under the Act from Section 8(e) to Section 8(d)2 was sufficient to deny Respondent a credit.

The *Dobczyk* court held that Respondent was not entitled to a credit for an award paid to Petitioner for a previous shoulder award based on the *Will County* decision. Specifically, because the *Will County* court ruled that a shoulder is not considered a "member" of Section 8(e) of the Act, and any PPD awards for shoulder conditions should be awarded pursuant to 8(d)2. Moreover, the court said that Section 8(e)17 credits under the act only apply to permanency losses contained within the bounds of Section 8(e) of the Act. The original award granted to Petitioner in the present case was for a left shoulder condition, where Petitioner sustained a rotator cuff tear. While at the time the injury was classified under Section 8(e) of the Act, pursuant to the *Will County* and *Dobczyk* decisions, shoulders injuries, for the purpose of credits, are no longer covered by Section 8(e); rather under Section 8(d)2.

The recent case of *Veath v. Illinois, State of Menard Correctional Center*, 10 WC 12821, changed the classification of elbow awards from Section 8(e) to Section 8(d)2. In *Veath*, the Arbitrator awarded the petitioner 17.5% loss of the use of his left elbow after sustaining injuries

which required a left elbow ulnar nerve debridement. However, the Commission changed the award from a Section 8(e) award to a Section 8(d)2 award citing the *Will County* decision as its basis for the augmentation.

In the present case Petitioner suffered an elbow injury as well, in the form of a torn biceps tendon, in light of these decisions, he is entitled to an award under Section 8(d)2 of the Act. Given that his award should be under Section 8(d)2 and that the award for which Respondent claims a credit was pursuant to Section 8(e), Respondent is due no credit for the award paid out for Respondent's previous permanent partial disability payment to Petitioner. Petitioner is entitled to his full Section 8(d)2 award.

ORDER OF THE ARBITRATOR

Petitioner is found to have suffered a permanent injury pursuant to Section 8(d)2 of the Act. Respondent shall pay Petitioner permanent partial disability benefits of **$664.72**/week for **85** weeks, because the injuries sustained caused the **17%** loss of the man as a whole as provided in Section 8(d)2 of the Act.

Deborah L. Simpson
Signature of Arbitrator

June 29, 2013
Date

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Debra Scoggins,

Petitioner,

vs.

14IWCC0005

NO: 11 WC 45932

City of Jerseyville,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, prospective medical expenses, notice, causal connection, statute of limitations, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 6, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 0 3 2014

David L. Gore

Michael J. Brennan

Mario Basurto

DLG/gal
O: 12/19/13
45

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

SCOGGINS, DEBRA
Employee/Petitioner

Case# **11WC045932**

14IWCC0007

CITY OF JERSEYVILLE
Employer/Respondent

On 2/6/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.11% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0487 SMITH ALLEN MENDENHALL ET AL
DOUG MENDENHALL
PO BOX 8248
ALTON, IL 62002

1001 SCHREMPF BLAINE KELLY & DARR
MATTHEW W KELLY
307 HENRY ST SUITE 415
ALTON, IL 62002

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0005

Debra Scoggins
Employee/Petitioner

v.

City of Jerseyville
Employer/Respondent

Case # 11 WC 045932

Consolidated cases: ___

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Collinsville**, on **11/28/2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other ___

FINDINGS

14IWCC0005

On the date of accident, **11/03/2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned **$52,025.85**; the average weekly wage was **$1,000.50**.

On the date of accident, Petitioner was **54** years of age, *married* with **0** dependent children.

Respondent *has* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$n/a** for TTD, **$n/a** for TPD, **$n/a** for maintenance, and **$n/a** for other benefits, for a total credit of **$n/a**.

Respondent is entitled to a credit of **$for all medical bills paid** under Section 8(j) of the Act.

ORDER

Petitioner failed to meet her burden of proof regarding accident. Accordingly, this claim is denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

1/30/13
Date

ICArbDec19(b)

FEB - 6 2013

Findings of Fact

Petitioner began her employment with the City of Jerseyville in 1976 in the police department as a telecommunicator. In August of 2005, petitioner moved to the water department and read meters for three years. In August of 2008, petitioner began work for respondent as an operator at the waste water treatment plant.

In connection with her job duties at the waste water treatment plant, petitioner was one of three operators who rotated duties. Petitioner's job duties were varied and self-paced. Petitioner's job duties involved many different activities which included some button pushing and some valve turning. It also included operating hoses, climbing ladders, traveling between lift stations and cutting grass. Petitioner worked an eight hour day with two 15 minute breaks and an hour off for lunch, for a total workday of six and one-half hours.

Petitioner first sought treatment for hand complaints in March of 2005, at which time she saw her primary care physician, Dr. James Ricci, who ordered EMG/nerve conduction studies. The EMG/nerve conduction studies were completed on April 5, 2005 and were positive for bilateral carpal tunnel syndrome. Petitioner had further complaints with respect to her wrists and was again seen by her primary care physician, Dr. Ricci, in April of 2007, at which time it was recommended that she see a surgeon in connection with her carpal tunnel problems. Petitioner testified that she thought her complaints were related to her employment at that time. Petitioner did not undertake any activities to pursue a workers' compensation claim as a result of her complaints in 2005 or 2007.

In addition to her prior carpal tunnel complaints, petitioner also had a lengthy course of care for a diagnosed condition of hypothyroidism with Dr. Ricci. By 1999, petitioner had had her thyroid removed and was on Synthroid in connection with her diagnosed surgical hypothyroidism. Petitioner remained on medications for her hypothyroidism at the time of trial. Dr. Ricci also diagnosed petitioner with hypertension as early as February of 2005.

Petitioner returned to Dr. Ricci on October 12, 2011, at which time he diagnosed chronic carpal tunnel syndrome. Dr. Ricci recommended updated EMG/nerve conduction studies as of his evaluation on November 3, 2011. Those studies were also positive for bilateral carpal tunnel syndrome.

Thereafter, petitioner initiated a course of care with Dr. Michael Beatty whom she first saw on December 8, 2011. Dr. Beatty testified on behalf of petitioner prior to trial. He concluded that petitioner did not have a diagnosis of hypothyroidism and, as such, that condition was not relevant in determining the question of causation as it related to petitioner's carpal tunnel syndrome and her employment. Dr. Beatty was of the opinion that petitioner's employment duties were sufficiently repetitive to constitute a causal connection with her carpal tunnel syndrome. Dr. Beatty recommended bilateral carpal tunnel releases. Dr. Beatty also completely discounted the possibility that petitioner might have thumb arthritis which could be a causative factor in the development of her carpal tunnel syndrome.

Respondent had petitioner seen by Dr. David Brown for an independent medical evaluation on June 5, 2012. Dr. Brown explored petitioner's job duties directly with petitioner. Dr. Brown also had a formal job description and a video which showed representative tasks performed by petitioner during the course of her normal workday. Dr. Brown ordered x-rays of both of petitioner's wrists which revealed

advanced, severe degenerative changes at the base of both thumbs, worse on the left than the right, consistent with petitioner's complaints..

Dr. Brown testified on behalf of respondent prior to trial. Dr. Brown noted that petitioner was of the gender and in the age group for which carpal tunnel syndrome is prevalent. He also concluded that petitioner's diagnosed hypothyroidism and her hypertension could be causative factors in the development of petitioner's bilateral carpal tunnel syndrome. Dr. Brown cited authoritative studies in support of those propositions, which studies were admitted at trial with his deposition. Dr. Brown testified that petitioner's severe degenerative changes at the base of her thumbs would have constituted a causative factor in the development of petitioner's condition. Finally, Dr. Brown expressed the opinion that petitioner's employment activities did not rise to a sufficient level to constitute a causative factor in petitioner's diagnosed condition or her need for treatment.

Based on the foregoing, the Arbitrator makes the following conclusions:

Petitioner failed to meet her burden of proof regarding the issue of accident. Petitioner's medical records clearly show that was diagnosed with carpal tunnel in 2005 and the evidence indicates she believed it was due to her employment at the time. The Arbitrator finds the opinions of Dr. Brown well-supported by the evidence which was presented at trial and more persuasive than those of Dr. Beatty. Accordingly, all other issues are rendered moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Dennis Grah,

14IWCC0006

Petitioner,

vs.

NO: 11 WC 33051
12 WC 44481

State of Illinois/ Menard Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 10, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED: JAN 0 3 2014

David L. Gore

Michael J. Brennan

Mario Basurto

DLG/gal
O: 12/19/13
45

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

GRAH, DENNIS
Employee/Petitioner

Case# **11WC033051**

12WC044481

14IWCC0006

SOI/MENARD C C
Employer/Respondent

On 5/10/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0558 ASSISTANT ATTORNEY GENERAL
KENTON J OWENS
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

MAY 10 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF **MADISON**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0006

Dennis Grah
Employee/Petitioner

v.

State Of Illinois/Menard C.C.
Employer/Respondent

Case # **11** WC **033051**

Consolidated cases: **12 WC 44481**

An *Application for Adjustment of Claim* was filed in each of these matters, and a *Notice of Hearing* was mailed to each party. These matters were heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Collinsville**, on **February 20, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

14IWCC0006

FINDINGS

On each date of accident the Respondent *was* operating under and subject to the provisions of the Act.

On each date of accident an employee-employer relationship *did* exist between Petitioner and Respondent.

On August 13, 2011, the petitioner *did not* sustain an accident that arose out of and in the course of employment. On June 28, 2012, the petitioner did sustain such an accident.

Timely notice of the asserted accidents *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to either asserted accident.

In the year preceding the 2011 injury, Petitioner earned **$62,880.00**; the average weekly wage was **$1,209.23.**

In the year preceding the 2012 injury, Petitioner earned **$65,580.00**; the average weekly wage was **$1,261.15.**

On each date of accident, Petitioner was **53** years of age, ***married*** with **0** dependent children.

Respondent is not liable for the submitted charges for the medical services.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**.

Respondent is entitled to a credit of $ **if any** under Section 8(j) of the Act.

ORDER

For reasons set forth in the attached decision, the requested medical benefits are denied.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

May 9, 2013
Date

ICArbDec19(b)

MAY 10 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DENNIS GRAH,	)	
	)	14IWCC0006
Petitioner,	)	
	)	
vs.	)	**Nos. 11 WC 33051**
	)	**12 WC 44481**
STATE OF ILLINOIS/MENARD C.C.,	)	
	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

These matters were consolidated and tried jointly pursuant to Sections 8(a) and 19(b) of the Act. The parties requested a singular decision encompassing both claims. Given the overlapping issues, the Arbitrator concurs with this approach.

STATEMENT OF FACTS

The claimant is a correctional sergeant at Menard Correctional Center. At the time of the asserted repetitive trauma and during the pendency of these matters he has worked the 11 P.M. to 7 A.M. shift. He began working at Menard in 1994 as a correctional officer and was promoted to sergeant in 2010. He also acknowledged being a beef cattle farmer since approximately 1976; the petitioner testified the duties surrounding this took approximately thirty hours per week.

The petitioner acknowledged that while employed at Menard he previously filed a claim for carpal and cubital tunnel syndrome incurred through repetitive trauma with an effective date of loss of November 23, 2009; that claim received case number 09 WC 49498. Both wrists and the left elbow were corrected surgically, and the petitioner was off work until June 27, 2010. That case settled with the contracts being approved on July 13, 2010, for 17.5% of each hand and 22.5% of the left arm. See RX2.

The petitioner now asserts repetitive trauma in claim 11 WC 33051 with an effective date of loss of August 13, 2011, and an acute accident on June 28, 2012 in 12 WC 44481. With regard to case 11 WC 33051, the claimant originally asserted repetitive trauma to the right arm and elbow, and thereafter amended the application to include the neck and the body as a whole. Both cases currently surround a surgical recommendation from Dr. Matthew Gornet for cervical spine disk replacement surgery at C5-6 and C6-7.

The petitioner filed the Application for Adjustment of Claim in August 2011, but did not obtain care regarding this claim until his appointment with Dr. Paletta on

September 14, 2011. PX3. The intake questionnaire indicates pain in the right elbow and arm. RX4. When he spoke with Dr. Paletta, however, he noted neck pain and pain in both elbows. He advised the pain had begun four to five years prior, and worsened over the last two years. Dr. Paletta prescribed an EMG study, which was done that day. PX4. The results indicated cervical radiculopathy and mild right ulnar neuropathy. Dr. Paletta ordered a cervical MRI and referred the petitioner to Dr. Gornet. PX3. The MRI was conducted that day and revealed multilevel disk disease, with herniations at C3-4 and C4-5 and bulging disks at C5-6 and C6-7, with foraminal stenosis at C5-6 and to a lesser extent at C6-7. PX5.

The claimant was seen by Dr. Gornet on October 24, 2011. See PX6. At that time he reported a one to two year history of symptoms which had worsened gradually. Dr. Gornet recommended injections at C5-6 and C6-7. The petitioner thereafter reported some relief from the injections but did have persistent symptoms.

On December 20, 2011, the petitioner saw Dr. Robson for a Section 12 examination at the request of his employer. Dr. Robson opined the petitioner suffered from degenerative disk disease and spondylosis, which in turn caused radiculopathy. Dr. Robson opined the petitioner would benefit from surgical intervention, but opined that the progression of the disease was not related to the claimant's work activities. RX6.

On March 5, 2012, Dr. Gornet recommended the petitioner attempt to live with his symptoms but would otherwise recommend dual level disk replacement at C5-6 and C6-7. On June 7, 2012, Dr. Gornet reviewed Dr. Robson's report and opined that the workplace activities did not cause the cervical spondylosis, but had caused the symptoms and again recommended surgical intervention based on that. PX6.

Regarding the second accident, the petitioner testified that on June 28, 2012, he was escorting a diabetic prisoner for an insulin shot, and the prisoner collapsed. The petitioner caught the falling inmate. He testified that this incident caused a pulling sensation in his shoulders, and reported the incident, but did not seek medical attention for that incident at the time or immediately thereafter.

On October 8, 2012, Dr. Gornet saw the petitioner. The petitioner did not report the June 2012 accident at that point. The petitioner's examination "was unchanged from 06/07/12." PX6. Dr. Gornet renewed his recommendation for surgery. On January 15, 2013, the petitioner presented and reported the June 2012 accident, and asserted worsening symptoms. Dr. Gornet recommended a new MRI. PX6.

The MRI was performed on January 15, 2013. It was not compared by the radiologist. It again demonstrated disk protrusions at multiple levels from C3 through C7 with multilevel foraminal stenosis. See PX5. On February 11, 2013, the petitioner saw Dr. Gornet. Dr. Gornet reviewed the MRI and opined it was generally comparable to the prior films, but opined the C4-5 level had increased. However, Dr. Gornet did not recommend intervention at that level, and maintained his prior recommendation for C5 through C7 surgery. See PX6.

Dr. Gornet and Dr. Robson each testified in deposition in support of their respective opinions relative to causal connection. See PX12, RX6.

At trial, the respondent, on cross-examination, illuminated a pre-injury incident on January 5, 2011, when the petitioner was involved in a physical altercation outside of work. See RX13, RX14. His typewritten statement acknowledges he was struck in the left side of his neck. RX13. Medical records from January 6 show he described anterior neck pain where redness was observed. RX14 (p.2).

OPINION AND ORDER

Accident and Causal Relationship

Given the overlapping facts and circumstances relative to these issues, the Arbitrator will address these issues jointly.

Relative to the August 2011 accident assertion, the petitioner is relying on a repetitive trauma theory, as opposed to an acute injury. See, e.g., *Peoria County Bellwood*, 115 Ill.2d 524 (1987); *Quaker Oats Co. v. Industrial Commission*, 414 Ill. 326 (1953). When performance of the employee's work involves constant or repetitive activity that gradually causes deterioration of or injury to a body part, the case may be compensable, provided it can be medically established that the origin of the injury was the repetitive stressful activity. However, it is required that the claimant prove that the injury is related to the employment and not the result of the normal degenerative aging process, as simply performing work over a period of years is not legally sufficient to prove that work is repetitive enough to cause an increased risk to the petitioner. *Id.*

The petitioner acknowledged a multitude of activities during any given day, as reflected in the job descriptions. These activities include paperwork; observation of inmates; verifying cell locks and deadlock checks; bar rapping one time per shift depending on the house; maintaining various logs, including inmate count sheets, tickets and incident reports; utilization of keys for doors and other locked items; assisting with inmate movement, which included application of handcuffs; room compliance assessments; generalized security and inmate control as needed. It should also be noted that the claimant worked the night shift, with reduced inmate movement. He also rotated between assignments on a regular basis. Based on the above findings and the credible record, the arbitrator finds the petitioner's duties may have a usual pattern or schedule, but are numerous and varied, with evidence of alternating activities in between. Moreover, the August 13, 2011 date carries no evidence of any substantial issue which could be rationally linked to a manifestation date of loss.

An examination of the evidence deposition of Dr. Gornet further shows that his causal opinion was based on an incomplete and inaccurate description of the petitioner's employment history. He was unaware of the claimant's substantial and rigorous outside

employment. Furthermore, he does not adequately explain how, if the condition was related to the petitioner's work, the symptoms would have continued to progress despite not being at work for a substantial portion of the relevant time period, when the petitioner was on Temporary Total Disability following the other asserted date of loss.

Dr. Gornet's analysis of the kinds of stressors the petitioner was exposed to was based on flawed information. The petitioner has not demonstrated by a preponderance of the credible evidence that any repetitive work activities have a causal link to his claimed injuries. The claim for compensation in 11 WC 33051 is denied.

Regarding the June 28, 2012 accident, 12 WC 44481, the petitioner did demonstrate an acute incident arising out of and in the course of his employment, thus satisfying the accident requirement. However, the surgical recommendation was made prior to the June 28, 2012 incident, and Dr. Gornet did not modify the recommendation following that accident, nor alter his assessment that it was the repetitive trauma which prompted the surgical recommendation. Moreover, the only level of the cervical spine that was arguably changed on the MRI was not the target of the surgical intervention. Most significantly, while the petitioner asserted there had been an increase in symptoms, the first examination by his physician following the June 2012 incident specifically noted there had been no change in his physical examination, and the petitioner did not seek any substantial treatment at the time. As such, the Arbitrator finds that the petitioner has not demonstrated a causal relationship between either the incurred treatment or the proposed course of medical care and the June 28, 2012 date of loss.

Notice

The Arbitrator finds that the petitioner did provide notice of the asserted accidents to the respondent within the time frame established by Section 6 of the Act.

Medical Services (Past and Prospective)

As these are not causally related, they are denied. The proposed future medical care requested is likewise denied, due to the lack of a causal relationship.

STATE OF ILLINOIS)
) SS.
COUNTY OF ST. CLAIR)
& WILLIAMSON

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Sherri Edwards,

Petitioner,

14IWCC0007

vs.

NO: 10 WC 16509

State of Illinois/ Menard Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, prospective medical expenses, causal connection, temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 26, 2012 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED: JAN 0 3 2014

David L. Gore

Michael J. Brennan

Mario Basurto

DLG/gal
O: 12/19/13
45

ILLINOIS WORKERS' COMPENSATION COMMISSION

NOTICE OF 19(b) DECISION OF ARBITRATOR

EDWARDS, SHERRI
Employee/Petitioner

Case# **10WC016509**

SOI/MENARD CORRECTIONAL CENTER
Employer/Respondent

14IWCC0007

On 9/26/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.14% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0558 ASSISTANT ATTORNEY GENERAL
KENTON J OWENS
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
201 E MADISON ST SUITE 3C
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

SEP 26 2012

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF St. Clair & Williamson)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0007

Sherri Edwards
Employee/Petitioner

Case # 10 WC 16509

v.

Consolidated cases: _____

State of Illinois / Menard Correctional Center
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Deborah L. Simpson**, Arbitrator of the Commission, in the city of **Collinsville / Herrin**, on **January 25, 2012 / March 21, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **accident, causation, medical bills, TTD**

FINDINGS 14IWCC0007

On the date of accident, **April 12, 2010**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$55,860.00**; the average weekly wage was **$1074.23**.

On the date of accident, Petitioner was **42** years of age, ***single*** with **0** dependent children.

ORDER

The Petitioner failed to prove a compensable accident within the meaning of the Act. Benefits requested pursuant to Section 8 and penalties and attorney fees pursuant to Sections 16 and 19 are therefore denied.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Deborah L. Simpson
Signature of Arbitrator

Sept 25, 2012
Date

ICArbDec19(b)

SEP 26 2012

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Sherri Edwards,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**No. 10 WC 16509**
	)	
State of Illinois / Menard Correctional Center,	)	
	)	
Respondent.	)	
	)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on April 12, 2010, the petitioner and the respondent were operating under the Illinois Worker's Compensation or Occupational Diseases Act and that their relationship was one of employee and employer. They further agree that the petitioner gave the respondent notice of the accident which is the subject matter of this hearing within the time limits stated in the Act.

At issue in this hearing is as follows: (1) did the petitioner sustain accidental injuries on April 12, 2010, that arose out of and in the course of her employment with the respondent; (2) is the petitioner's current condition of ill-being causally connected to the injury (3) is the respondent liable for the unpaid medical bills that are the subject of petitioner's exhibit number 1; and (4) is the petitioner entitled to TTD from July 13, 2011 to January 24, 2012, (the present) The petitioner has filed a petition for penalties and attorneys fees under sections 19(l), 19(k) and 16 of the act.

STATEMENT OF FACTS

The petitioner is employed by the State of Illinois at the Menard Correctional Center as a correctional officer. She has worked there for about fourteen (14) years. She is currently assigned to the health care unit on the 7 a.m. to 3 p.m. shift and spends the majority of her work time there; however she has been assigned to other parts of the facility including the towers from time to time. It is usually when she works overtime that she is in a different part of the facility. Over the years she has had various assignments, she has worked in the gallery an assignment that included bar rapping, where you take a metal bar and run it across each bar on each cell that has open bars one time per shift; cell shake downs where you search everywhere in the inmates cell checking the toilet, mattress, beds, property box and windows; she has operated the crank to put the cells on lock down or remove them from lock down; and she has opened and closed cell doors. She has also worked in the infirmary, which includes carrying trays of food to feed the inmates that are there. No information was provided as to the length of time she was assigned to

any of these other positions or what sequence they were in. She testified that she is currently in the health care unit and that this is the longest stint she has done, six years (6) in the unit. She is right hand dominant.

In her current assignment the health care unit, they provide medical services to inmates. She is responsible for the flow of traffic into and out of the unit. This requires her to open doors to allow inmates and corrections officers into the unit and then again to let them out. To get into the unit, the officer or inmate buzzes and she flips a switch to let them in the doorway. Then she has to open the door with a key to let them into the space where the cages are to hold the inmates that are there to see medical personnel. There is a four by four square that she reaches into to use the key to unlock the door. The door usually shuts by itself. While an inmate is in the health care unit they wait in a holding cell or cage. She has to unlock the cage to let the inmates in and out. There are three cages/cells that they wait in until their name is called for their turn with the medical person who they are there to see. She unlocks the cage to let them out, then when they finish they go back into the cage until a correctional officer is available to take them back to their cell. Most days there is about one hundred (100) people in and out of the healthcare unit during her 8 hour shift, sometimes it could be as many as two hundred (200).

The petitioner testified that she turns keys in the lock, a folger-adams key which is larger than a house key or a key for a padlock, two hundred (200) times per day. On petitioner's exhibit 11, a handwritten description of her job which petitioner claims she wrote it says "I am currently assigned to healthcare as the door officer approximately ten of the fourteen years of my employment. This job includes turning a key approximately five hundred to one thousand times a day letting inmates and staff in and out the door." (P. Ex. 11) She denies that this job description was written at the request of her attorney. During her description of her job requirements in the health care unit no mention is made of lifting heavy objects or of overhead lifting. She described handling paper forms and lists, locking and unlocking doors, opening doors and closing them and flipping a switch.

Joseph Durham, a major at the correctional facility testified that there is a second person assigned to the health care unit; the petitioner is not there by herself. That there are not two hundred inmates getting treated in a day and that turning the key to open the locks could happen as many as three hundred times a day at most, not the five hundred to one thousand times that the petitioner wrote in her job description.

On Rebuttal the petitioner was recalled to testify. At that time she testified that she is in the health care unit by herself a lot. That every inmate that comes down is escorted to the unit and that her estimate of between five hundred and one thousand times per shift turning keys was not an exaggeration.

Petitioner testified that sometimes she does work overtime and that would be the 3:00 p.m. to 11:00 p.m. shift. When she works overtime it is in a different position in the facility. In those different assignments she has worked in the gallery and had to bar wrap, she has participated in cell shake downs, she has operated the crank and opened and closed cell doors. She has worked in the tower and the armory as well. No information was provided as to how much overtime petitioner works, or how many times she is assigned to other areas of the facility.

She spoke in generalities as to what corrections officers had to do in various assignments but did not provide any information as to how that translated to her.

Petitioner testified that she began noticing at work that she had pain in her right arm and then tingling and numbness in both hands. She had had previous surgery on her neck for a herniated disc in about June of 2007. The surgery was successful and she did not think that the problems she was experiencing with her hands and arm were related to her prior neck issues. She went to Dr. David Brown, at the Orthopedic Center of St. Louis in 2009 and he ordered an EMG and a NCV. The results of the tests were negative for any problems in the elbows or the wrists. (R. Ex. 6) She said he told her it could be coming from her shoulder but she did not follow up. Petitioner's exhibit #3 is from her visit on April 12, 2010 and makes reference to her visit in 2009 and the nerve conduction study that was done in July of 2009 which according to Dr. Brown was unrevealing.

Petitioner returned to Dr. Brown on April 12, 2010 with continuing complaints of intermittent numbness and tingling and pain in both hands. Her examination according to Dr. Brown was again negative. Dr. Brown suggested she try wearing wrist splints at night on both wrists and take a nonsteroidal anti-inflammatory medication. He ordered repeat nerve conduction studies. Petitioner filled out a patient Questionnaire on April 12, 2010 indicating that her symptoms were pain, tingling and numbness in both hands. She put lines through both of the hands on both drawings of the human figure one representing the front and the other the back. (P. Ex. 4) Petitioner listed lying down and sleeping as the factors that aggravate her symptoms, skipping over activities like reaching, repetitive activities, household activities and other _____. It is difficult to tell on question four (4) whether she chose #7 that sports and recreation was the best description of how her symptoms began or #13 unknown. (P. Ex. 4,) The nerve conduction studies were completed on April 12, 2010 by Dr. Daniel Phillips. (P. Ex. 4) They were reviewed by Dr. Brown on April 15, 2010 and were normal. Based upon the examination he conducted in the office on the 12th and the nerve conduction studies the same day he had no further recommendations to make. Dr. Brown noted that screening for a neurogenic brachial plexopathy by Dr. Phillips was also unremarkable. (P. Ex. 3) She was told that she could work full duty with no restrictions by the doctor.

The petitioner said she knew about Dr. Brown and the carpal tunnel and cubital tunnel workers comp cases and heard that he was the one everyone had been seeing for the carpal tunnel thing for years. Petitioner testified that she was speaking with a co-worker about her numbness and tingling in her hands and the fact that the tests came back negative. He told her about Thoracic Outlet Syndrome, which is what he had so she went and looked it up on the internet. She thought some of the symptoms were similar to hers. She talked to her attorney about it before she went to see the doctors. She did tell the doctors that she had read about thoracic outlet syndrome and thought that she had it and to her knowledge no one tested her for that. She is the person who gave the doctor's offices Tom Rich's name as her attorney and she marked the medical information questionnaire with the name of Tom Rich as the person who referred her to them.

On April 25, 2011 Petitioner was again seen by Dr. D. Phillips, this time at the request of Dr. George Paletta, for nerve conduction studies. She had seen Dr. Paletta earlier and after his

examination he determined that there was no evidence of active cervical radiculopathy, carpal tunnel syndrome, cubital tunnel syndrome or neurogenic brachial plexopathy. He thought it was possible that she might have carpal tunnel and if she did he recommended surgery. He sent her to Dr. Phillips to repeat the nerve conduction studies since they were over one year old. (P. Ex. 5) On the date of the nerve conduction studies, Petitioner informed Dr. Phillips that she has read about thoracic outlet syndrome and found the symptoms to be similar to the symptoms that she is experiencing. At that time she filled out the patient information sheet as before she indicated that her symptoms were numbness and tingling in both hands, she again drew lines through both hands on the two diagrams representing the front and back of a person. She clearly checked #7 during recreation and sports as the best description of how her symptoms occurred. (P. Ex. 4) This time however she indicated that the pain/symptoms were periodic, they increased as the day progressed, and that lying down, repetitive activities including _____ (she left the area to fill in any activities blank, household activities and sleeping aggravated her symptoms. (P. Ex. 4) She was again told that she could work full duty with no restrictions.

Symptoms of thoracic outlet syndrome include pain, dysesthesia, numbness and weakness, usually throughout the affected hand or arm; positional effects, almost all patients describe reproducible exacerbation of symptoms by activities that require elevation or sustained use of the arms or hands, like reaching for objects overhead, lifting, prolonged typing or work at computer consoles, driving a motor vehicle, speaking on the telephone, shaving and combing and brushing the hair. Additionally lying supine can bring out the symptoms especially if the arms are positioned overhead and can result in difficulty sleeping. Headaches are a common complaint, as well as weakness and atrophy which is rare. (Pet. Ex. 12, R. Ex. 10) Possible causes of neurogenic thoracic outlet syndrome include repeated lifting of heavy objects overhead, repeated keyboard maneuvers for hours on end, carrying heavy objects below the waist and even actions like those of swimmers and weight lifters are possible causes. (P. Ex. 12) Turning a key repeatedly has not been listed in any medical journals as a cause of thoracic outlet syndrome. (P. Ex. 12)

On July 13, 2011 the Petitioner saw Robert Thompson, M.D. a vascular surgeon who has a specialization in Thoracic Outlet Syndrome. (P. Ex. 12, p.3) When she was examined by Dr. Thompson she complained of pain and an aching feeling which was exacerbated by overhead use of the arm, she reported that she is unable to lift the left arm without developing discomfort. She had bilateral hand numbness and in the last few months had developed left arm pain that radiates up the arm. She did not complain about having headaches or any weakness in her hands or with her grip. (P. Ex. 7, 12) She indicated that her job included heavy lifting and repetitive actions. She described her job as being required to lock and unlock the prison door to the health care unit between 150 and 200 times per day. (P. Ex. 7, 12) Her physical examination revealed full range of motion to both upper extremities tenderness over the subcoracoid space with radiation of the symptoms in the right and left arms with the left being greater than the right; mild tenderness with palpation over the left scalene triangle. The right and left radial pulses are present at rest and with the arms in the elevated position. (P. Ex. 7, 12) The upper limb tension test and the elevated arm stress test were both positive in that petitioner reported experiencing symptoms of numbness and tingling and discomfort during both. (P. Ex. 7, 12) When petitioner presented to Dr. Thompson she did not have any muscle weakness or atrophy in her hands, she had pain related limitations, she had equal grip strength on the left and the right hands, she did not

complain of any upper back or shoulder issues. (P. Ex. 12) Based upon the above, the petitioner was diagnosed with neurogenic thoracic outlet syndrome. (P. Ex. 7, 12)

Dr. Thompson recommended that she not work at this time, that she should be evaluated by a physical therapist at the Center for Thoracic Outlet Syndrome and that she begin a course of physical therapy for 4 to 6 weeks and that she return for follow-up in 6 to 8 weeks or sooner if necessary. Physical therapy was not successful and petitioner underwent surgery on September 20, 2011 by Dr. Thompson, on her left side. (P. Ex. 7) She had a second surgery on January 3, 2012 on her right side. (Supp. P. Ex. A, P. Ex. 7) The surgeries were followed by physical therapy. (P. Ex. 7, 8)

The arbitrator has reviewed a DVD (R. Ex. 5) and read the CorVel report, State of Illinois Job Analysis (R. Ex. 3). Neither the report nor the DVD showed or analyzed the health care unit and the work that is done there. The health care unit is mentioned as being a part of the 155 buildings that make up the correctional facility in the first paragraph on page one, but that is the extent of the information provided regarding that unit and what goes on there. (R. Ex. 3) The DVD showed various areas of the facility and demonstrated opening and closing different cells, doors, and security devices that are used on a daily basis. It included the gate house, the armory, the visitors screening area and the staircase and opening that inmates and correctional officers use when inmates have a visitor. They demonstrated bar rapping, the crank, opening chuck holes to pass food etc to inmates and to cuff them before they are removed from the cell. They showed the different types of keys used including the folger-adams key and the keys for pad locks and for the cell areas.

CONCLUSIONS OF LAW

An injury is accidental within the meaning of the Worker's Compensation Act when it is traceable to a definite time, place and cause and occurs in the course of the employment unexpectedly and without affirmative act or design of the employee. *Matthiessen & Hegeler Zinc Co. v Industrial Board,* 284 Ill. 378, 120 N.E. 2d 249, 251 (1918) If the condition or injury is not shown to be traceable to a definite time, place and cause and no evidence shows that the work activity caused the physical condition, compensation will be denied. *Johnson v. Industrial Commission,* 89 Ill.2d 438, 433 N.E.2d 649, 60 Ill.Dec. 607 (1982) 607 (1982)607 (1982)

An injury arises out of one's employment if it has its' origin in a risk that is connected to or incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Technical Tape Corp. vs IndustrialCommission,*58 Ill. 2d 226, 317 N.E.2d 515 (1974) "Arising out of" is primarily concerned with the causal connection to the employment. The majority of cases look for facts that establish or demonstrate an increased risk to which the employee is subjected to by the situation as compared to the risk that the general public is exposed to.

The burden is on the party seeking the award to prove by a preponderance of credible evidence the elements of the claim, particularly the prerequisites that the injury complained of arose out of and in the course of the employment. *Hannibal, Inc. v. Industrial Commission,* 38 Ill.2d 473, 231 N.E.2d 409, 410 (1967)

Did the petitioner sustain accidental injuries on April 12, 2010 that arose out of and in the course of her employment and is the petitioner's current condition of ill-being causally connected to the injury?

These two issues are closely connected and the same evidence and reasoning can be applied to both so they will be addressed together.

In this case, where the only positive indicators that the petitioner has a condition of ill being are all subjective, the petitioner's credibility is a major factor. The petitioner testified that she was aware of the correctional facility personnel who have been filing workers' compensation claims for carpal tunnel and cubital tunnel for years and that the doctor to see for these cases is Dr. Brown. In July of 2009 and again in April of 2011 petitioner complained to Dr. Brown about numbness and tingling in both of her hands. She does not mention any pain with the numbness or tingling nor does she mention any symptoms in her arms or her shoulders or her neck. Dr. Brown sends her for nerve conduction studies and each time the results are normal, there is no indication of carpal or cubital tunnel, nor is there evidence of neurogenic brachial plexopathy which would indicate possible thoracic outlet syndrome according to Dr. Phillips, the neurologist doing the testing. The patient questionnaire that she fills out each time only indicates numbness and tingling in both hands, nothing else. Petitioner testified at the hearing that in 2009 she began noticing at work that she had pain in her right arm and then tingling and numbness in both hands. That information is not in any of the forms she filled out.

Petitioner then has a conversation with a co-worker who told her about his diagnosis of thoracic outlet syndrome. Petitioner gets some information regarding the condition, talks to a lawyer, goes to a different doctor, Dr. Paletta, who sends her back to Dr. Phillips for nerve conduction studies again. When she returned to Dr. Phillips in April of 2012 the petitioner actually tells Dr. Phillips that she has read about thoracic outlet syndrome and it fits her symptoms. On the patient questionnaire she again notes only numbness and tingling on both hands, however, she adds that the symptoms increase as the day goes on, they are aggravated by repetitive activities and household activities; she also indicated that her symptoms included weakness. The petitioner's third set of nerve conduction studies are again negative. She is sent to Dr. Thompson for further evaluation.

By the time she gets to Dr. Thompson, the petitioner is adding pain in her arms, the left side worse than the right to her increasing symptom list. She tells the doctor that she cannot lift with her left arm. She tells the doctor that she works as a correctional officer, that she had day to day activities that involved lifting weight, that it involved repetitive activity. She said she worked in a healthcare unit and her work required locking and unlocking prison doors between approximately one hundred and fifty to two hundred times per shift also.

Between the contradictions in the job description (opening and closing locks 150-200 times verses 500 to 1000 times) and duties (heavy repetitive lifting as well as opening and closing the prison doors) depending upon whom she is speaking with, the addition of symptoms after reading about thoracic outlet syndrome (addition of weakness, increasing pain as day goes on, repetitive behaviors aggravating her condition with no information in the blank for what

types of activities) and then adding even more symptoms (pain in her arms, more on the left than on the right, unable to lift anything with her left arm) when she sees Dr. Thompson to testifying at the hearing that she noticed pain in her right arm and then tingling and numbness at work, the petitioner was not a credible witness.

According to Dr. Thompson when a patient presents with the possibility of neurogenic thoracic outlet syndrome it is important to take a detailed and well documented history from the patient and from the medical records. Additionally it is important to make a detailed and well documented physical examination of the patient as well. At his deposition on direct examination he testified that he had the medical records from Dr. Brown as well as from doctors Paletta and Phillips and that he reviewed those records as part of his evaluation of the petitioner. He brought the file with him and it included the reports. On cross examination he testified that he did not have Dr. Brown's records, that Dr. Brown was just mentioned in Dr. Phillips' report. Based upon the information he received from the petitioner, the examination that he performed and the medical records from doctors Phillips and Paletta, Dr. Thompson diagnosed petitioner with neurogenic thoracic outlet syndrome and determined that it was related to her work.

The diagnosis, at least the basis for saying the petitioners symptoms were related to her job that the doctor relied on in making that determination was flawed. The doctor agrees that repetitively locking and unlocking the doors could cause carpal tunnel of cubital tunnel, however it is not a known cause or aggravating factor for thoracic outlet syndrome. The petitioner told the doctor that her job involved heavy lifting, repetitively, however there is no evidence of that in the job description she wrote in her own hand, she did not tell what items were being lifted or how often, nor was there any testimony regarding repeated heavy lifting at the hearing. Petitioner told him she was a correctional officer, he was familiar with the CorVel study and video as well as Dr. Sudekum's report describing the duties of a corrections officer and he relied on the information in there as to correctional officers duties as well. The medical tests that he relied on in making his diagnosis and decision required the petitioner to indicate to him when and if she felt pain and where she was feeling it. They are all subjective. There is no positive objective test used in making the determination described by the doctor. Additionally he did not have any of the information from Dr. Brown who had treated her in the past.

There is also the matter of the objective tests that were negative each time for carpal tunnel, cubital tunnel and neurogenic brachial plexopathy that were done in 2009, 2011 and April of 2012 by Dr. Phillips. There was no evidence presented that indicates that the job that the petitioner is doing and has been doing according to her for ten out of the fourteen years she has worked at the correctional facility caused the injury that petitioner claims she sustained or that it aggravates a pre-existing condition.

Based upon the evidence that has been presented, the petitioner has failed to prove that she sustained accidental injuries that arose out of and in the course of her employment and that the injuries are causally related to her current condition of ill being. The Petitioner failed to prove a compensable accident within the meaning of the Act.

The other issues regarding the unpaid medical bills and TTD, attorney's fees and penalties are moot.

ORDER OF THE ARBITRATOR

The Petitioner failed to prove a compensable accident within the meaning of the Act. Benefits requested pursuant to Section 8 and penalties and attorney fees pursuant to Sections 16 and 19 are therefore denied.

Deborah L. Simpson
Signature of Arbitrator

Sept 25, 2013
Date

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse Accident	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JOHN BICKEL,

Petitioner,

vs.

NO: 12 WC 12417
12 WC 12418

COOK COUNTY SHERIFF'S OFFICE,

14IWCC0008

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causation, medical expenses and temporary total disability, and being advised of the facts and law, reverses in part the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. Moreover, the Commission remands this case to the Arbitrator for additional proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission finds the following facts. Petitioner worked for the Cook County Sheriff's Department as a civil process server in March 2012. He worked for Respondent for about 24 years and as a process server for approximately 15 years. Petitioner worked out of the Bridgeview office. As a process server, Petitioner would serve court summons, which required him to drive from stop to stop, get out of his car, knock on the door and serve the summons if someone answered the door. He would serve about 50 summonses per day.

On March 5, 2012, Petitioner's sergeant assigned him to participate in riot training. The training lasted for three days, from March 3 through 5 at the UIC Pavilion. The trainees were learning crowd control and how to respond during protests when the crowd becomes uncontrollable. The training included running, pushing and circling crowds, and was led by five to six instructors from Cook County and the federal government. Petitioner dressed in a riot uniform consisting of a helmet, shield, gas mask and baton; it all weighed about 25 to 30 pounds.

Petitioner and the other trainees were instructed to practice a scenario where they arrived at a scene, got off a bus and then ran to the scene. About 50 trainees from Cook County and the Chicago Police Department were running down the 20 foot wide hall at the same time. They were instructed to run about 70 feet. Petitioner ran about 20 to 30 feet at a fast jog when his right knee gave out and he fell into a pop machine. Petitioner's employee accident report reflects the same history as his testimony.

Petitioner testified that he felt like he twisted his right knee and it became very painful. Petitioner stated that he hobbled and fell behind the line. He added that he told two of the instructors and the man running the training, Mr. Stone, that he twisted his knee and he had to sit down. Petitioner testified he rested for the remainder of the day but noticed his knee was swelling. Petitioner called his primary care physician, Dr. Levy, that day at about 3 p.m. to make an appointment. He also called in sick the next day, March 6, 2012, because his knee was swollen and it was painful to ambulate.

Petitioner returned to work on Sunday, March 11, 2012, the next day he was scheduled to work. He worked the noon to 10 p.m. shift. Petitioner's supervisors were Sergeant Dave Martin and Sergeant Sandra Anteczk. On March 11, one of his supervisors directed Petitioner to serve a summons to a residential home. Petitioner testified that he fell down about three stairs while serving the summons. Petitioner testified that he noticed his right knee was again sore and hurt. After falling, Petitioner took his lunch break before returning to the Bridgeview courthouse. Toward the end of his shift, Petitioner testified he told Sergeant Anteczk about the incident. No one else was present for the conversation and he is unsure if she filled out any paperwork. Petitioner testified about the process for reporting a work injury – the deputy fills out the initial paperwork and then turns it into the sergeant. Petitioner testified he followed the process for reporting this incident and is not aware of what Sergeant Anteczk did with the paperwork after he gave it to her.

Petitioner admitted on cross examination that he filled out paperwork for ordinary disability benefits. The Instruction and Application for Disability Benefits document notes that Petitioner applied for workers' compensation benefits for his disability but had not received any. Petitioner testified he only applied for ordinary disability benefits because his workers' compensation claim had been denied and otherwise Petitioner would not be paid.

Petitioner sought medical treatment shortly after the incidents. Petitioner first saw Dr. Levy on March 16, 2012, where Petitioner reported the history of the incidents. Dr. Levy examined Petitioner, prescribed Vicodin and referred him to Dr. Seymour.

Petitioner then treated with Dr. Seymour on March 19, 2012. Dr. Seymour recommended Petitioner have an MRI, which he had on March 20 and indicated a medial meniscus tear and some degenerative changes. When Petitioner returned to Dr. Seymour on March 22, 2012, Dr. Seymour recommended right knee arthroscopic surgery. Dr. Seymour performed a right knee arthroscopy on Petitioner on May 8, 2012. His post operative diagnosis was right knee medial meniscal tear and degenerative joint disease with torn cartilage.

Petitioner testified that immediately following the surgery his knee was still sore but with rest and therapy it started to improve. Dr. Seymour prescribed physical therapy for Petitioner three times a week for six weeks; however, Petitioner stated he was only able to attend therapy for three weeks because he could not afford the gas to drive to the sessions. Petitioner continued to treat with Dr. Seymour. On August 6, 2012, Dr. Seymour noted that Petitioner continued to have discomfort in his right knee and he administered a cortical steroid injection. Petitioner received three more injections on September 20, September 27 and October 8. Petitioner testified that after the injections, his knee was 95% improved. Dr. Seymour also continually kept Petitioner off work during his treatment. Petitioner remains under Dr. Seymour's care and had not been released to return to work at the time of the arbitration hearing.

Dr. Seymour offered the only causation opinion of record. On May 30, 2012, Dr. Seymour opined that Petitioner's injury occurred while he was at riot training and it was the proximate cause of his medial meniscus and cartilage tears. Dr. Seymour wrote "Certainly, the degenerative changes seen on x-ray and the MRI and arthroscopy would have predated the riot training injury, however, it is more probable than not that the meniscal tear was caused by the riot training injury and the cartilage tears were caused by an aggravation of the preexisting degenerative changes."

While Petitioner's right knee has greatly improved, Petitioner testified about his continued discomfort. Petitioner testified that he continues to experience pain in his right knee when he does a lot of walking. His right knee will also throb at night while Petitioner sleeps. Petitioner testified his range of motion and strength returned to about his pre-injury level.

Respondent called several witnesses to testify on its behalf. Michael Drew testified first; he is a claims adjuster and has worked in that capacity since 1978. As a claims adjuster, he handles workers' compensation issues for the Sheriff's Department and the Department of Transportation and has worked at Cook County since May 16, 2011. Mr. Drew testified about the process of receiving workers' compensation benefits on his end. Claims begin in the safety office of the Sheriff's Department and then Mr. Drew receives a fax with the first report and a supervisor's report. If the Sheriff's Department does not send Mr. Drew an accident report, he

has nothing to investigate. He also testified that he determines whether or not an incident qualifies as an injury for workers' compensation purposes and agreed what one was doing at the time of the injury is important if making that decision.

Mr. Drew testified he received Petitioner's file in March 2012 but it only contained information regarding the first alleged accident. Mr. Drew performed a preliminary investigation and obtained medical records. During the process of his investigation, Mr. Drew spoke to Petitioner's supervisor, a female sergeant whom he believes had a last name "A." He did not believe she witnessed the accident. Mr. Drew stated the sergeant told him Petitioner participated in the training class but the accident did not occur there. But, Mr. Drew later testified it was his understanding that Petitioner was actually participating in an exercise at the time he was injured. He then assigned an outside agent from 'Secure Path' to take a recorded statement. Mr. Drew determined that Petitioner was not entitled to temporary total disability payments or medical benefits and informed Petitioner of his decision on April 12, 2012.

Respondent also called Steve Hensley. He is the safety manager in the Safety Department for the Cook County Sheriff and in that role, he handles workers' compensation claims from various departments. Mr. Hensley's duties are limited to investigating the circumstances of the accident; he does not review the medical records. He also testified to the workers' compensation process. Mr. Hensley stated the injured employee is required to notify a supervisor and fill out paperwork; additionally, the supervisor fills out a form and any witness fill out statements. Mr. Hensley testified on March 12, 2012, he received notification of one accident involving Petitioner on March 6, which is the incorrect accident date. Mr. Hensley testified he did not receive any notification for an accident which allegedly occurred on March 10 or 11. Mr. Hensley testified on cross examination that about once a year, he will receive a phone call or a note from an employee advising him of an injury that did not go through the supervisor. However, it is not common for Mr. Hensley to be contacted directly about an accident and the injured employee has no responsibility to provide Mr. Hensley with an accident report.

Based on the aforementioned facts and considering the evidence as a whole, we hold that Petitioner proved he suffered an accident arising out of and in the course of his employment with Respondent on March 5, 2012, during riot training. Further, we find Petitioner's condition of ill being is causally connected to the March 5, 2012, work related accident. We hold that Petitioner should then be compensated as such. We find that Petitioner did not suffer a work related accident on March 11, 2012. Respondent did not receive notice of the incident and Petitioner's medical records consistently reflect the March 5 riot training accident were the cause of his right knee complaints. The evidence does not support that Petitioner suffered a second work accident on March 11.

Petitioner suffered from a work injury arising out of and in the course of his employment with Respondent on March 5, 2012. In Petitioner's regular job duties, he served summons for the Cook County Sheriff's Department. However, March 3-5, 2012, Petitioner was required to attend riot training as part of his job. His sergeant directed him to attend the training and he took part of the training as a Cook County police officer. Even though this training was not part of Petitioner's normal job duties, he participated in the training as part of his job requirement. Petitioner was following the instructions of the training directors when he injured his right knee. Petitioner testified that he was quickly jogging through a hallway when his knee gave out and he fell into a pop machine. His right knee was sore and swelled up immediately following the incident. The evidence clearly supports the history that Petitioner injured his right knee while participating in a work assignment. Petitioner's right knee injury unquestionable arose out of and in the course of his employment with Respondent; hence, we hold Petitioner proved he suffered an accident.

Additionally, Petitioner followed appropriate protocol after he injured himself. He reported to the instructors that he injured himself and sat out the rest of the training that day. Petitioner also testified that his fall was witnessed by the Chicago police officer who was running behind him. Petitioner filled out an accident report, which he turned into his sergeant. Both Mr. Drew and Mr. Hensley testified they received Petitioner's accident report and proper protocol was followed. Petitioner properly notified Respondent of his March 5, 2012, accident.

We further hold that Petitioner's condition of ill being is causally connected to his work related injury. Petitioner testified he immediately noticed pain and swelling in his right knee. The same day Petitioner injured himself, he called his family physician, Dr. Levy, and made an appointment to have his right knee examined about 10 days after the accident. Petitioner reported a consistent history of his right knee injury to Dr. Levy, who referred Petitioner to Dr. Seymour, a specialist. Dr. Seymour learned the same history of Petitioner's right knee issues and continuously treated Petitioner for his right knee complaints. The March 20 MRI showed that Petitioner suffered a medial meniscus tear and supported Dr. Seymour's findings. Petitioner's treatment culminated in right knee surgical intervention. Petitioner then experienced improvement following physical therapy and rest. On May 30, 2012, Dr. Seymour wrote a letter opining that Petitioner's right knee condition was causally connected to his riot training accident on March 5, 2012. This is the only, and thus unrebutted, causation opinion in this case. Based on Petitioner's continued treatment and Dr. Seymour's causation opinion, we hold that Petitioner proved his condition is causally related to his work injury.

Based on our findings of accident and causation, we hold Petitioner is entitled to medical expenses of $42,543.20. His treatment was reasonable and necessary as supported by his testimony and the medical evidence. The medical treatment also alleviated Petitioner's right knee complaints. Petitioner did not receive excessive treatment and his medical records support that the treatment was necessary for his pain complaints.

14IWCC0008

Additionally, we award temporary total disability benefits from March 11, 2012, through October 21, 2012, for a total of 32 weeks. Petitioner was unable to work as a result of the March 5, 2012, accident. Petitioner sought medical treatment shortly after that accident and has not been released to return to work by his treating physician, Dr. Seymour. Petitioner is awarded temporary total disability benefits for the time he has been unable to work due to his work related injury.

Based on the testimony and evidence as a whole, we find that Petitioner readily proved that he suffered a work related injury on March 5, 2012, and he should be compensated as such.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision is reversed and Petitioner proved he suffered a work related accident on March 5, 2012, and his condition of ill being is causally connected to that accident.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $882.67 per week for a period of 32 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $42,543.20 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

14IWCC0008

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 07 2014
TJT: kg
R: 11/5/13
51

Thomas J. Tyrrell

Daniel R. Donohoo

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

BICKEL, JOHN
Employee/Petitioner

Case# **12WC012417**
12WC012418

COOK COUNTY SHERIFF'S OFFICE
Employer/Respondent

14IWCC0008

On 1/17/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0412 JAMES M RIDGE & ASSOC
KARIN CONNELLY
101 N WACKER DR SUITE 200
CHICAGO, IL 60606

0132 COOK COUNTY STATE'S ATTORNEY
RICHARD CRUSOR ASA
509 RICHARD J DALEY CENTER
CHICAGO, IL 60602

STATE OF ILLINOIS)

COUNTY OF COOK) SS

14IWCC0003

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

John Bickel
Employee/Petitioner

v.

Cook County Sheriff's Office
Employer/Respondent

Case # 12WC 012417

Consolidated cases: 12 WC 012418

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Lynette Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **10/22/2012 & 11/08/2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

B. ☐ Was there an employee-employer relationship?

C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

D. ☐ What was the date of the accident?

E. ☒ Was timely notice of the accident given to Respondent?

F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?

G. ☐ What were Petitioner's earnings?

H. ☐ What was Petitioner's age at the time of the accident?

I. ☐ What was Petitioner's marital status at the time of the accident?

J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

K. ☐ Is Petitioner entitled to any prospective medical care?

L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD

M. ☐ Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. ☐ Other _____

FINDINGS

On the date of accident, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** **not** sustain an accident that arose out of and in the course of employment.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$68,848.00**; the average weekly wage was **$1,324.00**.

On the date of accident, Petitioner was **49** years of age, ***single*** with **0** children under 18.

Respondent ***has*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

The Petitioner has failed to prove, by a preponderance of the evidence, that an accident occurred, which arose out of and in the course of his employment therefore, no benefits are awarded, pursuant to the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS: Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE: If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

L. Thompson-Smith

Signature of Arbitrator

January 17, 2013

JAN 17 2013

ICArbDec19(b)

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

BICKEL, JOHN
Employee/Petitioner

Case# **12WC012418**

12WC012417

COOK COUNTY SHERIFF'S OFFICE
Employer/Respondent

14IWCC0008

On 1/17/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0412 JAMES M RIDGE & ASSOC
KARIN CONNELLY
101 N WACKER DR SUITE 200
CHICAGO, IL 60606

0132 COOK COUNTY STATE'S ATTORNEY
RICHARD CRUSOR ASA
509 RICHARD J DALEY CENTER
CHICAGO, IL 60602

14IWCC0008

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

- ☐ Injured Workers' Benefit Fund (§4(d))
- ☐ Rate Adjustment Fund (§8(g))
- ☐ Second Injury Fund (§8(e)18)
- ☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

John Bickel
Employee/Petitioner

v.

Cook County Sheriff's Office
Employer/Respondent

Case # 12WC 012418

Consolidated cases: 12 WC 012417

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Lynette Thompson-Smith**, Arbitrator of the Commission, in the city of Chicago, on **10/21/2012 & 11/08/2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date. an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$68,848.00**; the average weekly wage was **$,1,324.00**.

On the date of accident, Petitioner was **49** years of age, ***single*** with **0** children under 18.

Respondent ***has*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

The Petitioner has failed to prove, by a preponderance of the evidence, that an accident occurred, which arose out of and in the course of his employment therefore, no benefits are awarded, pursuant to the Act.

RULES REGARDING APPEALS: Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE: If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

L. Thompson-Smith

Signature of Arbitrator

January 17, 2013

JAN 17 2013

John Bickel
12 WC 12417
12 WC 12418

14IWCC0008

FINDINGS OF FACT

The disputed issues in these matters are: 1) accident; 2) causal connection; 3) notice; 4) medical bills; 5) temporary total disability; and 6) prospective medical services. *See*, AX1 & 2.

On March 5, 2012, the petitioner was working for the Cook County Sheriff's Department as a Deputy Sheriff. He was a process server and had had that job for 15 years; working out of the Bridgeview courthouse; serving approximately fifty (50) summons per day.

On March 5, 2012, he was required by his sergeant, to participate in riot training. The purpose of the training was to learn how to control crowds. The petitioner testified that he was dressed in riot clothing including a helmet, shield and gas mask. He further testified that the gear weighed between 25 and 30 pounds. The officers were practicing a scenerio where they arrived at the scene by bus, exited the bus and ran into the arena. To practice this action, they were in the UIC Pavilion with approximately 50 other officers. jogging at a fast pace, in a line. As Officer Bickel was running, he testified that his right knee gave way and he fell into a pop machine. He fell behind the line, sitting down and noticing immediate pain and that his knee was swelling.

The petitioner testified that he reported the accident that day, to two (2) instructors at the training class and a Mr. Stone, then made an appointment to see Dr. Levy, his family physician.

On March 16, 2012, Petitioner provided Dr. Levy with a history of injuring his knee at work about ten (10) days prior. Dr. Levy noted right knee pain, moderate to severe, with symptoms of swelling and giving way. He prescribed medication and advised the petitioner to follow-up in three (3) months or as needed. Petitioner was then referred to Dr. Scott A. Seymour, an orthopedic surgeon, who sent him for an MRI which was performed on March 20, 2012; indicating a probable horizontal tear of the medial meniscus. *See,* PX1.

On May 8, 2012, Dr. Seymour performed surgery; and his post-operative diagnosis was right knee medial meniscus tear and degenerative joint disease with torn cartilage. Dr. Seymour opined that Mr. Bickel sustained medial meniscus and cartilage tears in his

right knee while riot training and that that action was the approximate cause of the tears. He further opined that the degenerative changes seen on the x-ray and the MRI and arthroscopy would have predated the riot training injury, however, it is more probable than not that the meniscal tear was caused by the riot training injury and the cartilage tears were caused by an aggravation of the pre-existing degenerative changes."

The Arbitrator notes that the Petitioner alleges having suffered a second accident on March 11, 2012 (12 WC 12418), when he fell down three stairs while serving a summons The Arbitrator further notes that Petitioner amended the Request for Hearing, at trial, to change the date of accident from March 10, 2012 to March 11, 2012.

On cross examination, the petitioner was questioned regarding the accident report dated March 12, 2012 and an application for disability benefits, dated April 24, 2012, that he executed. On the employee's accident report the petitioner stated that the accident happened on March 6, 2012 not March 5, 2012, and that he did not receive medical treatment for his right knee however, did make a doctor's appointment right after the incident happened. He also related that he twisted his right knee during a riot training class and sat out the rest of the training because his knee was swollen and that he did advise a Director Stone of the incident. *See*, RX1.

Regarding the application for disability, the petitioner testified that he executed this form, which states that his disability began March 5, 2012. And that he ripped a muscle on his right knee; that he did not visit an emergency room; and further stated that this was an ordinary disability benefit, as opposed to a duty disability, "resulting from cause other than injury/illness in the performance of an act of duty." The form also states that the petitioner did file for workers' compensation benefits but had not received them. *See,* RX2.

Regarding case number 12 WC 12418, the petitioner testified that he prepared and tendered a written accident report to his supervisor, Sergeant Anzek however, the document never made it through the system. The respondent called Mr. Steven Hensley to testify that among his duties, he verifies injuries on duty reports and that he had not received such a report from Petitioner regarding an injury of March 10 or 11, 2012. The Arbitrator notes that the petitioner did not present any medical evidence supporting a work injury, on or about March 11, 2012.

CONCLUSIONS OF LAW

C. Did an accident occur that arose out of and in the course of Petitioner's employment by the respondent?

A claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. It is the function of the Commission to judge the credibility of the witnesses and resolve conflicts in the medical evidence. *See, O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E. 2d 221, 223 (1980). In deciding questions of fact, it is the function of the Commission to resolve conflicting medical evidence, judge the credibility of the witnesses, and assign weight to the witnesses' testimony. *See, R & D Thiel*, 398 Ill. App. 3d at 868; *See also, Hosteny v. Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009).

For an employee's workplace injury to be compensable under the Workers' Compensation Act, he must establish the fact that the injury is due to a cause connected with the employment such that it arose out of said employment. *See, Hansel & Gretel Day Care Center v. Industrial Comm'n*, 215 Ill.App.3d 284, 574 N.E.2d 1244 (1991). It is not enough that Petitioner is working when accidental injuries are realized; Petitioner must show that the injury was due to some cause connected with employment. *See, Board of Trustees of the University of Illinois v. Industrial Comm'n*, 44 Ill.2d 207 at 214, 254 N.E.2d 522, (1969).

The Arbitrator finds the petitioner has not proven, by a preponderance of the evidence, that accidents that are alleged to have occurred on March 5, 2012 and March 11, 2012, arose out of and were in the course of Petitioner's employment by Respondent. As there has been no finding of accident, the remaining matters are moot and will not be addressed.

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

William Johnson,

Petitioner,

vs.

NO: 11 WC 33406

14IWCC0009

State of Illinois Menard Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 20, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: JAN 09 2014
TJT:yl
o 11/26/13
51

Thomas J. Tyrrell

Kevin W. Lamborn

Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

JOHNSON, WILLIAM
Employee/Petitioner

Case# **11WC033406**

SOI/MENARD C C
Employer/Respondent

14IWCC0009

On 2/20/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.13% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0558 ASSISTANT ATTORNEY GENERAL
KENTON J OWENS
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

FEB 20 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

14IWCC0009

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

WILLIAM JOHNSON
Employee/Petitioner

v.

SOI/MENARD C.C.
Employer/Respondent

Case # **11**WC **033406**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **EDWARD LEE**, Arbitrator of the Commission, in the city of **COLLINSVILLE**, on **December 27, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. [ ] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [ ] Was there an employee-employer relationship?
C. [ ] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [ ] What was the date of the accident?
E. [ ] Was timely notice of the accident given to Respondent?
F. [x] Is Petitioner's current condition of ill-being causally related to the injury?
G. [ ] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [x] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [x] Is Petitioner entitled to any prospective medical care?
L. [x] What temporary benefits are in dispute?
   [ ] TPD [ ] Maintenance [x] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other

FINDINGS

On the date of accident, **07/28/11**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$58,080.88**; the average weekly wage was **$1116.94**

On the date of accident, Petitioner was **47** years of age, ***married*** with **1** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**.

Respondent is entitled to a credit of **$ if any** under Section 8(j) of the Act.

ORDER

No benefits are awarded.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

2/16/13
Date

ICArbDec19(b)

FEB 20 2013

WILLIAM JOHNSON V. MENARD C.C., 11 WC 33406

The Arbitrator finds the following facts:

This is a 19(b) decision. The issues in dispute are causation, prospective medical care.

Petitioner is a 47 year old employee of the State of Illinois at the Menard Correctional Center. Petitioner began working at Menard in January 2001. Petitioner testified that on July 28, 2011 he was escorting inmates and one of the inmates ran at him and hit him. Petitioner was sent by his attorney to see Dr. George Paletta.

Dr. Paletta sent Petitioner to be examined by Dr. Gornet. Dr. Gornet diagnosed petitioner with disc herniations at C5-6 and C4-5 and recommended disc replacements at those levels.

Petitioner was examined by Dr. Joseph Williams in Springfield, Illinois. Dr. Williams authored a report concerning his opinions; said report is attached to Respondent's Exhibit 1. Dr. Williams deposition was taken. In said deposition, Dr. Williams testified that the July 28, 2011incident did not have any significant effect on the overall condition of his cervical spine. (Rx. 1) Dr. Williams explained that Petitioner had right foraminal stenosis at C5-6 and C3-4. Dr. Williams noted that Petitioner complaints involve left arm numbness and tingling. Dr. Williams stated that Petitioner's symptoms do not correlate with the disc herniations at C5-6 and C3-4.

A review of the medical records shows that on July 29, 2011 x-rays of Petitioner's neck were taken that show loss of disc height at C4-5 and C5-6. (Px. 3) Loss of disc height is a degenerative condition that predated the July 28, 2011 accident.

After being see at the Medical Arts Clinic, Petitioner was referred to Workcare Occupational Health in Herrin, IL. As of August 19, 2011, it was noted that complaints were numbness and tingling down his left arm . (Px. 5) At that time Petitioner's neck range of motion was better and it was noted that his cervical strain was improved. (Id.)

Dr. Paletta referred Petitioner for a Nerve Conduction Study by Dr. Daniel Phillips. Dr. Phillips found no abnormalities in the left upper extremity and no cervical radiculopathy. (Px. 8)

The Petitioner argues that his preexisting degenerative condition was causally connected because he may have been symptom free before the accident and exhibited subjective symptoms thereafter. However, this position is offset by the fact that right sided MRI findings do not anatomically correlate to the Petitioner's left sided complaints.

THEREFORE, THE ARBITRATOR FINDS, there is no casual connection between Petitioner's current condition and Petitioner's July 21, 2011 accident.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Martha Rodriguez Lomeli,

Petitioner,

14IWCC0010

vs.

NO: 11 WC 24932

ABM Janitorial Services,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, medical expenses, and benefit rates, hereby reverses the Arbitrator's Decision and finds that Petitioner failed to prove that she sustained accidental injuries arising out of and in the course of her employment on June 16, 2011.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner started working for Respondent, a janitorial/cleaning service, as a maintenance worker in December 2010. (T.7-8) Petitioner testified that she worked 8 hours a day and that her job consisted of cleaning and wiping down handrails, cleaning restrooms (including the toilets, stalls, walls and doors), sweeping and mopping. (T.8-10) Petitioner explained that she used a circular motion to clean and wipe down the handrails. (T.8-10) Petitioner had breaks every two hours and a lunch. (T.10-11) Petitioner explained that she cleaned the handrails for about two to three days every month and that she usually sprayed with the left hand and wiped down the handrail with the right. (T.11,12) When her hands got tired, she would switch and spray with the right and wipe with the left. (T.16) Petitioner testified that there were handrails all over the building and that each handrail was about 35 feet in length. (T.13,14) Petitioner cleaned the

bathrooms, mopped and swept daily. (T.11-12) At the end of the day, she would clean all the supplies she used throughout the day with a water-powered compressor. (T.17-18) Petitioner testified that she used both hands to operate the compressor's nozzle. (T.18-19) Petitioner testified that she felt vibrations in her hands while operating the compressor, which she did for about fifteen minutes at the end of every day. (T.19)

2. Petitioner testified that on June 16, 2011, she noticed numbness and coldness in her hands. (T.19-20) Petitioner later changed her testimony and claimed that she felt symptoms in her right hand and did not have any difficulties in her left hand. (T.20) Petitioner testified that she told her supervisor what was happening and the supervisor told her to take the day off. (T.20) Petitioner then went to Schererville Immediate Care and was seen by Dr. Fausto Magno. (PX1) Petitioner complained of local pain, abnormal sensation and numbness in the volar surface of the right wrist. Dr. Magno noted that the "[o]nset of symptoms was about 2 days ago." (PX1) Dr. Magno prescribed pain medication.

3. Petitioner followed up at Schererville Immediate Care and saw Dr. Julie De Rosa on June 17, 2011. (PX1) Dr. De Rosa noted that Petitioner was "[f]eeling a little better but work told her to get a note from doctor regarding restrictions or not. Symptoms began after wiping/polishing rails for long hours at work. [Petitioner] states another worker has similar symptoms and has carpal tunnel syndrome." (PX1) Dr. De Rosa diagnosed Petitioner as having carpal tunnel syndrome and referred Petitioner to an orthopedist. Dr. De Rosa also placed the following restrictions on Petitioner for one week: no repetitive use of right hand/wrist.

4. Petitioner followed up with Dr. De Rosa on June 24, 2011. (PX1) Dr. De Rosa noted that Petitioner's pain had "improved" but that she continued to have numbness "off and on." (PX1) Dr. De Rosa again referred Petitioner to an orthopedist and restricted Petitioner from using her right hand.

5. Petitioner saw Dr. Sunil Patel on June 28, 2011 and June 30, 2011. (PX2) During both visits, Dr. Patel noted that Petitioner had developed pain and numbness in her right hand. Dr. Patel indicated that Petitioner was to follow up with Dr. Robert Coats and restricted Petitioner from using her right hand at work.

6. On July 9, 2011, Respondent prepared a job analysis of Petitioner's position, listed as Class 1 Cleaner. (JX1) The analysis states, in pertinent part: "2. The client is required to mop floors up to frequently throughout the shift on many days. She pushes and empty mop bucket out of the supply closet and uses the power washer to clean the mop and bucket. The power washer has a hose and nozzle. She squeezes a trigger on the hose to activate the water and soap. The client fills the mop bucket with approximately two gallons of water and then hangs the hose and nozzle back on the wall of the power washer at approximately chest to shoulder level. She pushes the mop bucket along to the area where the spill is located. The client wrings out the mop and mops the floor. When she is finished mopping, the client pushes the mop bucket to the power washer area and tips the mop bucket to empty it. 3. The client is required to use a 'walk behind' machine, which is a floor scrubber. She uses a hose to dispense water and soap solution into the machine at hip level. She operates the hand controls at waist level to run the machine along the floor space and clean the floor areas in the plant. There is a button that controls the speed of the

machine. The machine is self-propelled, so she doesn't push it, she merely guides it along the floor and turns it around to change direction. The client uses this machine approximately once a week. 4. The client is required to lift a 5 gallon bucket of disinfectant approximately twice per week. The bucket weighs 49 pounds and she lifts it from approximately knee to waist level. She usually uses a hose to dispense the disinfectant solution, but approximately twice a week she is required to lift an entire bucket of this solution and pour it into her mop bucket at approximately knee level to make a more concentrated solution....5. The client is required to dust the guardrails throughout the plant....For more thorough cleaning, such as during a Line Release, she uses a spray bottle and rag to clean the rails. All the rails in the building are cleaned once a month, but there are three cleaners who split this task throughout the month. 6. The client uses a spray bottle and cloth to clean windows on the equipment in the plant as needed. She uses a squeegee wrapped in a soft wool for this activity if the window is large....11. The client is required to clean the women's restrooms and locker rooms. There are two to eight stalls in each restroom. It takes an average of 20 minutes to clean a restroom. The client restocks the paper and sanitary products. She empties the trash cans and cleans the toilets. She wipes down the sinks and counters and mirrors. The client replaces the soap as needed. The soap box weighs 19 pounds and is lifted from floor to shoulder level....The client sweeps and mops the floor....12. The client cleans the office areas inside the plant. She dusts the desks, phones, file cabinets and counters in the office area with a rag and dust wand as needed. She empties the small garbage cans as needed....13. The client pushes a garbage cart around the plant while she is performing her job demands. It required 5 to 7 pounds of force at waist level to push/pull this cart....14. The client is required to vacuum the entry way area rug as needed....15. The client is required to clean during a 'Line Release.' A Line Release involves a more thorough cleaning of a section of the production line." The more thorough cleaning involved sweeping, mopping, wiping down handrails, machine doors, cabinets and windows, and using a "walk behind" floor scrubber. Petitioner also swept, mopped, and picked up trash throughout the building. (JX1)

Video taken of the job analysis, which is 20:02 minutes long, shows a worker mopping, using a power washer to clean a dirty mop and bucket, squeezing out excess water from the mop using the compressor on the bucket, filling a bucket with water, operating the self-propelled floor scrubber, carrying a bucket of cleaning solution, dusting and wiping down handrails/guardrails, wiping down machinery, sweeping up scraps, rolling up/rolling out felt mats, and cleaning/wiping down a water fountain while someone narrates and points out some of the equipment required to perform the job, such as mops, buckets, floor scrubber, and weighs a couple of bags of trash. (RX5) When the narrator slightly lifts the bags to see how much they weigh, she determines that the bags weigh about 16 pounds & 8 pounds, respectively; however, as she releases the slightly lifted portions of the bags, it appears that the scale numbers move, indicating that the bags weigh more than claimed by the narrator. (RX5)

7. Petitioner started treating with Dr. Robert W. Coats II on July 13, 2011. (PX2) Dr. Coats noted that Petitioner does janitorial work. "She has been working for the last six months and in early June she stated (sic) having symptoms of pain as well as numbness and tingling in both hands. She says she is right-hand dominant and the right hand bothers her more than the left." (PX2) Dr. Coats diagnosed Petitioner as having bilateral carpal tunnel and felt that it was work related. Dr. Coats administered steroid injections to Petitioner's carpal tunnels and ordered neutral wrist splints and physical therapy. Dr. Coats also took Petitioner off work for two weeks.

8. On November 30, 2011, Petitioner saw Dr. Robert A. Wysocki for a Section 12 examination at Respondent's request. (RX1) Dr. Wysocki examined Petitioner and reviewed Petitioner's medical records and diagnostic exams, along with the job analysis for Petitioner's position. Dr. Wysocki diagnosed Petitioner as having bilateral carpal tunnel syndrome and recommended that Petitioner undergo an EMG, to confirm the diagnosis, and bilateral wrist cock-up splints. However, Dr. Wysocki did not feel that Petitioner's carpal tunnel syndrome is causally related to her work activities with Respondent and explained that Petitioner's work duties, which he detailed in the report, "include primarily fine motor use of the hands with light occasional lifting, but no heavy repetitive gripping use of significant vibratory tools or heavy repetitive lifting which have been shown in the literature to be causally related to carpal tunnel syndrome. It should be noted that the majority of her symptoms early on in the course of symptoms primarily were numbness and tingling that awoken her at night and were not symptoms which came on during her activities at work....I believe that [Petitioner] is capable of an attempt for return back to work full duty at this time." Dr. Wysocki felt that if Petitioner failed conservative treatment, then surgery would be appropriate.

9. Petitioner stopped working for Respondent on January 21, 2012. (T.47) Petitioner testified that Respondent sent her home. (T.47)

10. On January 25, 2012, Dr. Coats issued a narrative report in which he outlined Petitioner's condition and treatment up to that point. (PX3) Dr. Coats' assessment was that Petitioner has "work induced bilateral carpal tunnel syndrome." Dr. Coats explained that "[i]t is very rare for a 24 year old woman who is not pregnant without any other disorders affecting her metabolism or fluid status, to develop carpal tunnel syndrome, especially without any history of trauma. I find it quite compelling that she was asymptomatic when she started working and within six months of working, she developed pain and paresthesias in the median distribution that seems to have responded well to oral steroid medications, steroid injections and Naprosyn....I am fairly certain that if she continues to do the type of work that she is currently doing, that her symptoms will become re-exacerbated and require operative intervention. In the meantime, she needs restrictions for work; no repetitive motion, no lifting, pushing, pulling or carrying greater than 5 lbs. with either extremity and neutral wrist splints to wear at work to prevent excessive wrist flexion and extension."

11. Petitioner continued to follow up with Dr. Coats, who continued to administer conservative treatment, including steroid injections and having Petitioner use neutral wrist splints. (PX2) On February 21, 2012, noting that conservative treatment had failed, Dr. Coats ordered carpal tunnel surgery.

12. Surveillance video was taken of Petitioner on February 23, 2012, February 24, 2012, February 27, 2012 and February 28, 2012. (RX3,RX6) The video shows Petitioner driving, talking on her cell phone, loading and unloading items into and out of the back of her vehicle, and carrying a couple of bags of groceries. The video also shows a woman, who appears to be Petitioner, carrying a child.

13. On August 3, 2012, Dr. Coats issued an addendum to his January 25, 2012 narrative report after reviewing a job description of Petitioner's job. (PX4) Dr. Coats explained that Petitioner

"clearly" had carpal tunnel syndrome and that the condition is causally related to her job with Respondent. "Whether [Petitioner's duties] would cause carpal tunnel syndrome in the average person, I don't know, but certainly in [Petitioner's] case, they have and I have in the past recommended and will continue in the future to recommend operative treatment for her problem."

14. Additional surveillance was conducted on Petitioner on September 10, 2012 and September 11, 2012. (RX7,RX8) The video shows Petitioner carrying a toddler and performing semi-lunges while carrying the toddler. Petitioner did not appear to be in any pain or distress, nor did she appear to have any problem carrying the child. At hearing, Petitioner testified that she has two children, a five year old and a six year hold. (T.30-31) Petitioner also testified that the only time she picks up her 5 year old son is when he falls asleep in the car. (T.33)

In reversing the Arbitrator's decision, the Commission notes that despite being diagnosed as having bilateral carpal tunnel syndrome, Petitioner claims only right carpal tunnel syndrome was brought on by her work for Respondent. The Commission also notes that Petitioner first testified that she noticed numbness and coldness in her hands on June 16, 2011, but later changed her testimony and claimed that she felt symptoms only in her right hand on June 16, 2011. (T.19-20) Furthermore, the Commission notes that Petitioner's work, while hand intensive, did not require constant heavy repetitive gripping, significant use of vibratory tools, or heavy repetitive lifting. Petitioner admitted at hearing that she cleaned handrails for about two to three days every month, not daily. (T.11,12) Petitioner also admitted that when she did this she usually sprayed with the left hand and wiped down the handrail with the right and when her hands got tired, she would switch and spray with the right and wipe with the left. (T.11,12,16)

The evidence does not establish any work which was repetitive and forceful with the right hand only. Considering Petitioner used both her hands to perform the same actions, the Commission is not persuaded by Petitioner's explanations for why her left arm was idiopathic carpal tunnel, but that her right was caused by work.

The Commission also finds the opinions of Dr. Wysocki more persuasive and supported by the evidence than those of Dr. Coats. In his Section 12 examination of Petitioner, Dr. Wysocki diagnosed Petitioner as having bilateral carpal tunnel syndrome, but opined that it was not causally related to Petitioner's work for Respondent. (RX1) Dr. Wysocki explained that Petitioner's work duties "include primarily fine motor use of the hands with light occasional lifting, but no heavy repetitive gripping use of significant vibratory tools or heavy repetitive lifting which have been shown in the literature to be causally related to carpal tunnel syndrome." (RX1) Dr. Wysocki further noted that "the majority of [Petitioner's] symptoms early on in the course of symptoms primarily were numbness and tingling that awoken her at night and were not symptoms which came on during her activities at work." (RX1) As explained above, Petitioner's description of her duties, as well as the job analysis of Petitioner's job entered into evidence by Petitioner, show that Petitioner's job did not involve constant or repetitive heavy lifting, gripping, or use of vibratory tools. (T.7-14,16-19,PX6) In fact, the Commission notes that the only heavy lifting Petitioner is seen doing is carrying and playing with her child on surveillance video. (RX7,RX8)

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Based on the totality of the evidence, the Commission finds that Petitioner has failed to establish that she sustained accidental injuries arising out of and in the course of her employment with Respondent on June 16, 2011. Accordingly, we reverse the Decision of the Arbitrator and deny compensation.

IT IS THEREFORE ORDERED BY THE COMMISSION that that the Decision of the Arbitrator is reversed since Petitioner failed to prove he sustained an accidental injury arising out of his employment with Respondent, and, therefore, her claim for compensation is hereby denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 09 2014
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o-12/12/13
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Michael P. Latz

Michael P. Latz

David L. Gore

Mario Basurto